

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** SB 1415  
**Author:** Kuehl  
**Bill Date:** July 14, 2008, amended  
**Subject:** Patient Records: maintenance and storage  
**Sponsor:** Author

**STATUS OF BILL:**

This bill is currently on the Assembly Floor.

**DESCRIPTION OF CURRENT LEGISLATION:**

This bill would require physicians, at the time an initial patient record is created, to provide a statement to the patient that sets forth the patient's rights regarding his or her medical records and the intended retention period for the records. The physician must either have the patient sign an acknowledgment of having received the information or, if the patient refuses to sign, that the fact that he or she have refused to sign must be noted in the medical record. This bill also requires physicians who plan to destroy patient records earlier than the period originally specified in the statement to notify the patient no fewer than sixty days prior to the destruction.

**ANALYSIS:**

Current law establishes procedures for providing access to patient medical records and gives health care providers various responsibilities regarding providing access to these records. The existing laws are somewhat broad regarding the length of time that physicians are required to keep patient medical records.

Although physicians are required by law to reply to a patient's request for his or her records (at the patient's cost), physicians are under no obligations to inform patients prior to the destruction of the medical records. This has resulted in numerous records being destroyed without patients' knowledge or consent.

The California Medical Association (CMA) guidelines state that "before discarding old records, patients should be given an opportunity to claim the records or have them sent to another physician." CMA offers three recommended options for physicians to consider regarding retention of medical records:

- Maintain records indefinitely.

- Maintain records for 25 years.
- At a minimum, retain records for 10 years after the last date the patient is seen.

CMA also notes that although maintenance of patient medical records is important in terms of patient care, medical records are also invaluable to physicians who may face claims of malpractice.

This bill requires physicians, at the time an initial patient record is created, to provide a statement to the patient, or the patient's representative, that sets forth the patient's rights to inspect his or her medical records, to obtain copies of the records, and to provide a written addendum with respect to any statement in the patient's records that the patient believes to be incomplete or incorrect. The statement provided for patient signature must also include the intended retention period for the records, as specified in applicable law or by the physician's retention policy. This bill requires that the patient sign an acknowledgment of having received the statement. If the patient or the patient's representative refuses to sign the statement, that refusal must be noted in the patient's medical record.

This bill also requires physicians who plan to destroy patient records earlier than the period originally specified in the statement to notify the patient no fewer than sixty days prior to the destruction. The physician must notify the patient via first class mail, electronic mail, or both, to the patient's last mailing or electronic mail address, or both. The notification must inform the patient that his or her records are going to be destroyed and when the date of destruction is scheduled. The physician must provide a patient with his or her original medical records earlier than the period specified in the statement if the patient makes a request for the records to the physician before the date of the proposed destruction

**FISCAL:**               None

**POSITION:**           Support

July 17, 2008

AMENDED IN ASSEMBLY JULY 14, 2008

AMENDED IN ASSEMBLY JULY 1, 2008

AMENDED IN ASSEMBLY JUNE 19, 2008

AMENDED IN SENATE MAY 20, 2008

AMENDED IN SENATE APRIL 22, 2008

AMENDED IN SENATE APRIL 10, 2008

**SENATE BILL**

**No. 1415**

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**Introduced by Senator Kuehl**  
(Coauthor: Assembly Member Dymally)

February 21, 2008

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An act to add Section 123106 to the Health and Safety Code, relating to patient records.

LEGISLATIVE COUNSEL'S DIGEST

SB 1415, as amended, Kuehl. Patient records: maintenance and storage.

Existing law establishes procedures for providing access to various types of health care records, including patient records, as defined, by patients and persons having responsibility for decisions respecting the health care of others. Existing law gives health care providers, as defined, various responsibilities in connection with providing access to these records.

This bill would require certain health care providers who create patient records, at the time the initial patient record is created, to provide a statement ~~to be signed by~~ the patient, or the patient's representative, that sets forth the patient's rights, as specified, and the intended retention

period for the records, as specified in applicable law or by the health care provider's retention policy. The bill would require ~~a copy of the signed statement to be provided to~~ the patient, or the patient's representative, *to sign an acknowledgment of having received the statement described above*, and would also require, if the patient, or the patient's representative, refuses to sign the ~~statement~~ *acknowledgment*, that this fact be included in the patient's record.

This bill would require certain health care providers that plan to destroy patient records earlier than the period specified in the ~~signed~~ statement, no fewer than 60 days before a patient's records are to be destroyed, to notify the patient that his or her records are scheduled to be destroyed, when they are scheduled to be destroyed, and set forth the patient's rights, as specified. The bill would require a health care provider to provide a patient with his or her original medical records that the provider plans to destroy earlier than the period specified in the ~~signed~~ statement if the patient makes a request for the records to the provider before the date of the proposed destruction of the records.

This bill would provide that the above provisions shall only apply to a health care provider, as defined, whose first visit with a patient occurs on or after January 1, 2009. It would also provide that the above provisions shall not apply to a health care provider whose patient is a minor at the time the patient record is created.

This bill would provide for the issuance of citations and the assessment of administrative penalties for violation of the bill's requirements, as specified. The bill would exempt the patient records created by a psychiatrist, as defined, from the requirements of the bill.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 123106 is added to the Health and Safety
- 2 Code, to read:
- 3 123106. (a) A health care provider described in paragraphs
- 4 (4), (5), (6), (8), and (9) of subdivision (a) of Section 123105, who
- 5 creates patient records, as defined in subdivision (d) of Section
- 6 123105, shall, at the time the initial patient record is created,
- 7 provide a statement ~~to be signed by~~ the patient, or the patient's
- 8 representative, that sets forth both of the following:

1 (1) The patient's rights under this chapter to inspect his or her  
2 medical records, obtain copies of his or her medical records, and  
3 to provide a written addendum, pursuant to Section 123111, with  
4 respect to any item or statement in the patient's records that the  
5 patient believes to be incomplete or incorrect.

6 (2) The intended retention period for the records, as specified  
7 in applicable law or by the health care provider's retention policy.

8 ~~(b) A copy of the signed statement required pursuant to~~  
9 ~~subdivision (a) shall be provided to the patient.~~

10 *(b) The patient, or the patient's representative, shall sign an*  
11 *acknowledgment that he or she received the statement required*  
12 *pursuant to subdivision (a).*

13 *(c) Nothing in this section shall preclude the statement required*  
14 *pursuant to subdivision (a) from being included in another form*  
15 *or statement provided to the patient, or the patient's representative,*  
16 *at the time the initial patient record is created.*

17 ~~(e)~~

18 *(d) If a patient, or the patient's representative, is provided a*  
19 *statement to be signed at the time that the initial patient record is*  
20 *created, and the patient, or the patient's representative, refuses to*  
21 *sign an acknowledgment that he or she received the statement, the*  
22 *patient's record shall indicate that the patient, or the patient's*  
23 *representative, refused to sign.*

24 ~~(d)~~

25 *(e) If a health care provider to whom subdivision (a) applies*  
26 *plans to destroy patient records earlier than the period specified*  
27 *in the signed statement, the health care provider shall, no fewer*  
28 *than 60 days before a patient's records are to be destroyed, notify*  
29 *the patient, via first-class mail, electronic mail, or both, to the*  
30 *patient's last known mailing or electronic mail address, or both.*  
31 *The notification shall inform the patient that his or her records are*  
32 *scheduled to be destroyed and the date of the proposed destruction*  
33 *of records. The notification shall also inform the patient of his or*  
34 *her rights under this chapter to inspect his or her medical records.*  
35 *A health care provider to whom subdivision (a) applies shall*  
36 *provide a patient with his or her original medical records that the*  
37 *provider plans to destroy earlier than the period specified in the*  
38 *signed statement statement required pursuant to subdivision (a)*  
39 *if the patient makes a request for the records to the health care*  
40 *provider before the date of the proposed destruction of the records.*

1 Nothing in this section shall be construed to reduce the length of  
2 record retention as otherwise required by law.

3 ~~(e)~~

4 *(f)* A health care provider to whom subdivision (a) applies shall  
5 not be subject to this section for medical records that are created  
6 for a patient who is referred to the provider solely for a diagnostic  
7 evaluation, if the provider does not provide treatment to the patient  
8 and reports the results of the diagnostic evaluation to the patient's  
9 referring provider.

10 ~~(f)~~

11 *(g)* This section shall only apply to a health care provider, as  
12 ~~defined in subdivision (a), provider to whom subdivision (a) applies~~  
13 who creates an initial patient record for a patient whose first visit  
14 with the health care provider occurs on or after January 1, 2009.

15 ~~(g)~~

16 *(h)* This section shall not apply to a health care provider, as  
17 ~~defined in subdivision (a), provider to whom subdivision (a) applies~~  
18 whose patient is a minor at the time the patient record is created.

19 ~~(h)~~

20 *(i)* A health care provider who violates this section may be cited  
21 and assessed an administrative penalty in accordance with Section  
22 125.9 of the Business and Professions Code. No citation shall be  
23 issued and no penalty shall be assessed upon the first violation by  
24 a licensee of this section. Upon the second and each subsequent  
25 violation by a health care provider of this section, a citation may  
26 be issued and an administrative penalty may be assessed after  
27 appropriate notice and opportunity for hearings. Notwithstanding  
28 any other provision of law, the remedy described in this subdivision  
29 constitutes the exclusive remedy for a violation of this section.  
30 However, nothing in this section affects other existing rights,  
31 duties, or remedies provided by law.

32 ~~(i)~~

33 *(j)* The patient records created by a psychiatrist, including  
34 psychotherapy notes, as defined in Section 164.501 of Title 45 of  
35 the Code of Federal Regulations, are not subject to this section.  
36 For the purposes of this subdivision, "psychiatrist" means a  
37 physician and surgeon licensed pursuant to Chapter 5 (commencing  
38 with Section 2000) of Division 2 of the Business and Professions  
39 Code or pursuant to the Osteopathic Act, who devotes, or is

- 1 reasonably believed by the patient to devote, a substantial portion
- 2 of his or her time to the practice of psychiatry.

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MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** SB 1441  
**Author:** Ridley-Thomas  
**Bill Date:** July 3, 2008, amended  
**Subject:** Task Force: address standards for impaired  
**Sponsor:** Author

**STATUS OF BILL:**

This bill is currently in the Assembly Appropriations Committee.

**DESCRIPTION OF CURRENT LEGISLATION:**

This bill would establish the Substance Abuse Coordination Committee (SACC) within the Department of Consumer Affairs (DCA) which would be comprised of the executive officers of the department's healing arts licensing boards. The bill would require the committee to formulate, no later than January 1, 2010, uniform and specific standards in specified areas that each healing arts board would be required to use in dealing with substance-abusing licensees.

**ANALYSIS:**

This bill addresses the issue of impaired licensees in various professions in the wake of the Medical Board's (Board) failed audits of the physician diversion program, which sunset June 30, 2008. The bill is also in response to the fact that no audits or reviews have been conducted on the other health care licensing boards that maintain and operate diversion programs for licensees that suffer from chemical dependency. The purpose of this bill is to increase public protection and restore public confidence by establishing and maintaining common and uniform standards governing the different health care licensing boards' diversion programs.

This bill establishes the SACC for all Boards to issue a set of best practices and recommendations to govern the boards' diversion programs and diversion evaluation committees, and would be comprised of the executive officers of the boards. The SACC will be required to formulate standards that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program.



A concern raised at the committee hearing was the lack of addiction healthcare expertise on this committee.

**FISCAL:**               None

**POSITION:**           Support if amended to require the committee to have provider expertise.

July 16, 2008

AMENDED IN ASSEMBLY JULY 3, 2008  
AMENDED IN ASSEMBLY JUNE 16, 2008  
AMENDED IN SENATE MAY 7, 2008  
AMENDED IN SENATE APRIL 7, 2008

**SENATE BILL**

**No. 1441**

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**Introduced by Senator Ridley-Thomas**

February 21, 2008

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An act to amend Sections 1695.1, 1695.5, 1695.6, 1697, 1698, 2361, 2365, 2366, 2367, 2369, 2663, 2665, 2666, 2770.1, 2770.8, 2770.11, 2770.12, 3501, 3534.1, 3534.3, 3534.4, *and* 3534.9 of, and to add Article 3.6 (commencing with Section 315) to Chapter 4 of Division 1 of, the Business and Professions Code, relating to health care.

LEGISLATIVE COUNSEL'S DIGEST

SB 1441, as amended, Ridley-Thomas. Healing arts practitioners: substance abuse.

Existing law requires various healing arts licensing boards, including the Dental Board of California, the Board of Registered Nursing, the Physical Therapy Board of California, the Physician Assistant Committee, and the Osteopathic Medical Board of California, to establish and administer diversion programs or diversion evaluation committees for the rehabilitation of healing arts practitioners whose competency is impaired due to the abuse of drugs or alcohol, and gives the diversion evaluation committees certain duties related to termination of a license from the diversion program and reporting termination, designing treatment programs, denying participation in the program, reviewing activities and performance of contractors, determining

completion of the program, and purging and destroying records, as specified.

This bill would establish in the Department of Consumer Affairs the Substance Abuse Coordination Committee, which would be comprised of the executive officers of the department's healing arts licensing boards, as specified. The bill would require the committee to formulate, no later than January 1, 2010, uniform and specific standards in specified areas that each healing arts board would be required to use in dealing with substance-abusing licensees. The bill would specify that the program managers of the diversion programs for the Dental Board of California, the Board of Registered Nursing, the Physical Therapy Board of California, the Physician Assistant Committee, and the Osteopathic Medical Board of California, as designated by the executive officers of those entities, are responsible for certain duties previously assigned to the diversion evaluation committees under those programs, including, as specified, duties related to termination of a licensee from the diversion program and reporting termination, designing treatment programs, denying participation in the program, reviewing activities and performance of contractors, determining completion of the program, and purging and destroying records. The bill would also provide that diversion evaluation committees created by any of the specified boards or committees operate in an advisory role to the program manager of the diversion program, and would require those diversion evaluation committees to make certain recommendations to the program managers.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature hereby finds and declares all of
- 2 the following:
- 3 (a) Substance abuse is an increasing problem in the health care
- 4 professions, where the impairment of a health care practitioner for
- 5 even one moment can mean irreparable harm to a patient.
- 6 (b) Several health care licensing boards have "diversion
- 7 programs" designed to identify substance-abusing licensees, direct
- 8 them to treatment and monitoring, and return them to practice in
- 9 a manner that will not endanger the public health and safety.

1 (c) Substance abuse monitoring programs, particularly for health  
2 care professionals, must operate with the highest level of integrity  
3 and consistency. Patient protection is paramount.

4 (d) The diversion program of the Medical Board of California,  
5 created in 1981, has been subject to five external performance  
6 audits in its 27-year history and has failed all five audits, which  
7 uniformly concluded that the program has inadequately monitored  
8 substance-abusing physicians and has failed to promptly terminate  
9 from the program, and appropriately refer for discipline, physicians  
10 who do not comply with the terms and conditions of the program,  
11 thus placing patients at risk of harm.

12 (e) The medical board's diversion program has failed to protect  
13 patients from substance-abusing physicians, and the medical board  
14 has properly decided to cease administering the program effective  
15 June 30, 2008.

16 (f) The administration of diversion programs created at other  
17 health care boards has been contracted to a series of private  
18 vendors, and none of those vendors has ever been subject to a  
19 performance audit, such that it is not possible to determine whether  
20 those programs are effective in monitoring substance-abusing  
21 licensees and assisting them to recover from their addiction in the  
22 long term.

23 (g) Various health care licensing boards have inconsistent or  
24 nonexistent standards that guide the way they deal with  
25 substance-abusing licensees.

26 (h) Patients would be better protected from substance-abusing  
27 licensees if their regulatory boards agreed to and enforced  
28 consistent and uniform standards and best practices in dealing with  
29 substance-abusing licensees.

30 SEC. 2. It is the intent of the Legislature that:

31 (a) Pursuant to Section 156.1 of the Business and Professions  
32 Code and Section 8546.7 of the Government Code, that the  
33 Department of Consumer Affairs conduct a thorough audit of the  
34 effectiveness, efficiency, and overall performance of the vendor  
35 chosen by the department to manage diversion programs for  
36 substance-abusing licensees of health care licensing boards created  
37 in the Business and Professions Code, and make recommendations  
38 regarding the continuation of the programs and any changes or  
39 reforms required to ensure that individuals participating in the  
40 programs are appropriately monitored, and the public is protected

1 from health care practitioners who are impaired due to alcohol or  
2 drug abuse or mental or physical illness.

3 (b) The audit shall identify, by type of board licensee, the  
4 percentage of self-referred participants, board-referred participants,  
5 and board-ordered participants. The audit shall describe in detail  
6 the diversion services provided by the vendor, including all aspects  
7 of bodily fluids testing, including, but not limited to, frequency of  
8 testing, randomicity, method of notice to participants, number of  
9 hours between the provision of notice and the test, standards for  
10 specimen collectors, procedures used by specimen collectors, such  
11 as whether the collection process is observed by the collector,  
12 location of testing, and average timeframe from the date of the test  
13 to the date the result of the test becomes available; group meeting  
14 attendance requirements, including, but not limited to, required  
15 qualifications for group meeting facilitators, frequency of required  
16 meeting attendance, and methods of documenting and reporting  
17 attendance or nonattendance by program participants; standards  
18 used in determining whether inpatient or outpatient treatment is  
19 necessary; and, if applicable, worksite monitoring requirements  
20 and standards. The audit shall review the timeliness of diversion  
21 services provided by the vendor; the thoroughness of  
22 documentation of treatment, aftercare, and monitoring services  
23 received by participants; and the thoroughness of documentation  
24 of the effectiveness of the treatment and aftercare services received  
25 by participants. In determining the effectiveness and efficiency of  
26 the vendor, the audit shall evaluate the vendor's approval process  
27 for providers or contractors that provide diversion services,  
28 including specimen collectors, group meeting facilitators, and  
29 worksite monitors; the vendor's disapproval of providers or  
30 contractors that fail to provide effective or timely diversion  
31 services; and the vendor's promptness in notifying the boards when  
32 a participant fails to comply with the terms of his or her diversion  
33 contract or the rules of the board's program. The audit shall also  
34 recommend whether the vendor should be more closely monitored  
35 by the department, including whether the vendor should provide  
36 the department with periodic reports demonstrating the timeliness  
37 and thoroughness of documentation of noncompliance with  
38 diversion program contracts and regarding its approval and  
39 disapproval of providers and contractors that provide diversion  
40 services.

1 (c) The vendor and its staff shall cooperate with the department  
2 and shall provide data, information, and case files as requested by  
3 the department to perform all of his or her duties. The provision  
4 of confidential data, information, and case files from health  
5 care-related boards and the vendor to the department shall not  
6 constitute a waiver of any exemption from disclosure or discovery  
7 or of any confidentiality protection or privilege otherwise provided  
8 by law that is applicable to the data, information, or case files. It  
9 is the Legislature's intent that the audit be completed by June 30,  
10 2010, and on subsequent years thereafter as determined by the  
11 department.

12 SEC. 3. Article 3.6 (commencing with Section 315) is added  
13 to Chapter 4 of Division 1 of the Business and Professions Code,  
14 to read:

15  
16 Article 3.6. Uniform Standards Regarding Substance-Abusing  
17 Healing Arts Licensees  
18

19 315. (a) For the purpose of determining uniform standards  
20 that will be used by healing arts boards in dealing with  
21 substance-abusing licensees, there is established in the Department  
22 of Consumer Affairs the Substance Abuse Coordination  
23 Committee. The committee shall be comprised of the executive  
24 officers of the department's healing arts boards established pursuant  
25 to Division 2 (commencing with Section 500), the State Board of  
26 Chiropractic Examiners, and the Osteopathic Medical Board of  
27 California. The Director of Consumer Affairs shall chair the  
28 committee.

29 (b) The committee shall be subject to the Bagley-Keene Open  
30 Meeting Act (Article 9 (commencing with Section 11120) of  
31 Division 3 of Title 2 of the Government Code).

32 (c) By January 1, 2010, the committee shall formulate uniform  
33 and specific standards in each of the following areas that each  
34 healing arts board shall use in dealing with substance-abusing  
35 licensees, whether or not a board chooses to have a formal  
36 diversion program:

37 (1) Specific requirements for a clinical diagnostic evaluation of  
38 the licensee, including, but not limited to, required qualifications  
39 for the providers evaluating the licensee.

1 (2) Specific requirements for the temporary removal of the  
2 licensee from practice, in order to enable the licensee to undergo  
3 the clinical diagnostic evaluation described in subdivision (a) and  
4 any treatment recommended by the evaluator described in  
5 subdivision (a) and approved by the board, and specific criteria  
6 that the licensee must meet before being permitted to return to  
7 practice on a full-time or part-time basis.

8 (3) Specific requirements that govern the ability of the licensing  
9 board to communicate with the licensee's employer about the  
10 licensee's status and condition.

11 (4) Standards governing all aspects of required testing, including,  
12 but not limited to, frequency of testing, randomicity, method of  
13 notice to the licensee, number of hours between the provision of  
14 notice and the test, standards for specimen collectors, procedures  
15 used by specimen collectors, the permissible locations of testing,  
16 whether the collection process must be observed by the collector,  
17 back-up testing requirements when the licensee is on vacation or  
18 otherwise unavailable for local testing, requirements for the  
19 laboratory that analyzes the specimens, and the required maximum  
20 timeframe from the test to the receipt of the result of the test.

21 (5) Standards governing all aspects of group meeting attendance  
22 requirements, including, but not limited to, required qualifications  
23 for group meeting facilitators, frequency of required meeting  
24 attendance, and methods of documenting and reporting attendance  
25 or nonattendance by licensees.

26 (6) Standards used in determining whether inpatient, outpatient,  
27 or other type of treatment is necessary.

28 (7) Worksite monitoring requirements and standards, including,  
29 but not limited to, required qualifications of worksite monitors,  
30 required methods of monitoring by worksite monitors, and required  
31 reporting by worksite monitors.

32 (8) Procedures to be followed when a licensee tests positive for  
33 a banned substance.

34 (9) Procedures to be followed when a licensee is confirmed to  
35 have ingested a banned substance.

36 (10) Specific consequences for major violations and minor  
37 violations. In particular, the committee shall consider the use of a  
38 "deferred prosecution" stipulation similar to the stipulation  
39 described in Section 1000 of the Penal Code, in which the licensee  
40 admits to self-abuse of drugs or alcohol and surrenders his or her

1 license. That agreement is deferred by the agency unless or until  
2 the licensee commits a major violation, in which case it is revived  
3 and the license is surrendered.

4 (11) Criteria that a licensee must meet in order to petition for  
5 return to practice on a full-time basis.

6 (12) Criteria that a licensee must meet in order to petition for  
7 reinstatement of a full and unrestricted license.

8 (13) If a board uses a private-sector vendor that provides  
9 diversion services, standards for immediate reporting by the vendor  
10 to the board of any and all noncompliance with any term of the  
11 diversion contract or probation; standards for the vendor's approval  
12 process for providers or contractors that provide diversion services,  
13 including, but not limited to, specimen collectors, group meeting  
14 facilitators, and worksite monitors; standards requiring the vendor  
15 to disapprove and discontinue the use of providers or contractors  
16 that fail to provide effective or timely diversion services; and  
17 standards for a licensee's termination from the program and referral  
18 to enforcement.

19 (14) If a board uses a private-sector vendor that provides  
20 diversion services, the extent to which licensee participation in  
21 that program shall be kept confidential from the public.

22 (15) If a board uses a private-sector vendor that provides  
23 diversion services, a schedule for external independent audits of  
24 the vendor's performance in adhering to the standards adopted by  
25 the committee.

26 (16) Measurable criteria and standards to determine whether  
27 each board's method of dealing with substance-abusing licensees  
28 protects patients from harm and is effective in assisting its licensees  
29 in recovering from substance abuse in the long term.

30 SEC. 4. Section 1695.1 of the Business and Professions Code  
31 is amended to read:

32 1695.1. As used in this article:

33 (a) "Board" means the Board of Dental Examiners of California.

34 (b) "Committee" means a diversion evaluation committee  
35 created by this article.

36 (c) "Program manager" means the staff manager of the diversion  
37 program, as designated by the executive officer of the board. *The*  
38 *program manager shall have background experience in dealing*  
39 *with substance abuse issues.*



1 SEC. 5. Section 1695.5 of the Business and Professions Code  
2 is amended to read:

3 1695.5. (a) The board shall establish criteria for the acceptance,  
4 denial, or termination of licentiates in a diversion program. Unless  
5 ordered by the board as a condition of licentiate disciplinary  
6 probation, only those licentiates who have voluntarily requested  
7 diversion treatment and supervision by a committee shall  
8 participate in a diversion program.

9 (b) A licentiate who is not the subject of a current investigation  
10 may self-refer to the diversion program on a confidential basis,  
11 except as provided in subdivision (f).

12 (c) A licentiate under current investigation by the board may  
13 also request entry into the diversion program by contacting the  
14 board's Diversion Program Manager. The Diversion Program  
15 Manager may refer the licentiate requesting participation in the  
16 program to a diversion evaluation committee for evaluation of  
17 eligibility. Prior to authorizing a licentiate to enter into the  
18 diversion program, the Diversion Program Manager may require  
19 the licentiate, while under current investigation for any violations  
20 of the Dental Practice Act or other violations, to execute a  
21 statement of understanding that states that the licentiate understands  
22 that his or her violations of the Dental Practice Act or other statutes  
23 that would otherwise be the basis for discipline, may still be  
24 investigated and the subject of disciplinary action.

25 (d) If the reasons for a current investigation of a licentiate are  
26 based primarily on the self-administration of any controlled  
27 substance or dangerous drugs or alcohol under Section 1681 of  
28 the Business and Professions Code, or the illegal possession,  
29 prescription, or nonviolent procurement of any controlled substance  
30 or dangerous drugs for self-administration that does not involve  
31 actual, direct harm to the public, the board shall close the  
32 investigation without further action if the licentiate is accepted  
33 into the board's diversion program and successfully completes the  
34 requirements of the program. If the licentiate withdraws or is  
35 terminated from the program by the program manager, the  
36 investigation shall be reopened and disciplinary action imposed,  
37 if warranted, as determined by the board.

38 (e) Neither acceptance nor participation in the diversion program  
39 shall preclude the board from investigating or continuing to  
40 investigate, or taking disciplinary action or continuing to take

1 disciplinary action against, any licentiate for any unprofessional  
2 conduct committed before, during, or after participation in the  
3 diversion program.

4 (f) All licentiates shall sign an agreement of understanding that  
5 the withdrawal or termination from the diversion program at a time  
6 when the program manager determines the licentiate presents a  
7 threat to the public's health and safety shall result in the utilization  
8 by the board of diversion treatment records in disciplinary or  
9 criminal proceedings.

10 (g) Any licentiate terminated from the diversion program for  
11 failure to comply with program requirements is subject to  
12 disciplinary action by the board for acts committed before, during,  
13 and after participation in the diversion program. A licentiate who  
14 has been under investigation by the board and has been terminated  
15 from the diversion program by the program manager shall be  
16 reported by the program manager to the board.

17 SEC. 6. Section 1695.6 of the Business and Professions Code  
18 is amended to read:

19 1695.6. A committee created under this article operates in an  
20 advisory role to the diversion program manager. Each committee  
21 shall have the following duties and responsibilities:

22 (a) To evaluate those licentiates who request to participate in  
23 the diversion program according to the guidelines prescribed by  
24 the board and to make recommendations to the program manager.  
25 In making the recommendations, a committee shall consider the  
26 recommendations of any licentiates designated by the board to  
27 serve as consultants on the admission of the licentiate to the  
28 diversion program.

29 (b) To review and designate those treatment facilities to which  
30 licentiates in a diversion program may be referred, and make  
31 recommendations to the program manager.

32 (c) To receive and review information concerning a licentiate  
33 participating in the program.

34 (d) To consider in the case of each licentiate participating in a  
35 program whether he or she may with safety continue or resume  
36 the practice of dentistry, and make recommendations to the  
37 program manager.

38 (e) To perform such other related duties, in an advisory capacity,  
39 as the board may by regulation require.

1 SEC. 7. Section 1697 of the Business and Professions Code is  
2 amended to read:

3 1697. Each licentiate who requests participation in a diversion  
4 program shall agree to cooperate with the treatment program  
5 designed by the program manager and to bear all costs related to  
6 the program, unless the cost is waived by the board. Any failure  
7 to comply with the provisions of a treatment program may result  
8 in termination of the licentiate's participation in a program.

9 SEC. 8. Section 1698 of the Business and Professions Code is  
10 amended to read:

11 1698. (a) After the program manager in his or her discretion  
12 has determined that a licentiate has been rehabilitated and the  
13 diversion program is completed, the program manager shall purge  
14 and destroy all records pertaining to the licentiate's participation  
15 in a diversion program.

16 (b) Except as authorized by subdivision (f) of Section 1695.5,  
17 all board and committee records and records of proceedings  
18 pertaining to the treatment of a licentiate in a program shall be  
19 kept confidential and are not subject to discovery or subpoena.

20 SEC. 9. Section 2361 of the Business and Professions Code is  
21 amended to read:

22 2361. As used in this article:

23 (a) "Board" means the Osteopathic Medical Board of California.

24 (b) "Diversion program" means a treatment program created  
25 by this article for osteopathic physicians and surgeons whose  
26 competency may be threatened or diminished due to abuse of drugs  
27 or alcohol.

28 (c) "Committee" means a diversion evaluation committee  
29 created by this article.

30 (d) "Participant" means a California licensed osteopathic  
31 physician and surgeon.

32 (e) "Program manager" means the staff manager of the diversion  
33 program, as designated by the executive officer of the board. *The*  
34 *program manager shall have background experience in dealing*  
35 *with substance abuse issues.*

36 SEC. 10. Section 2365 of the Business and Professions Code  
37 is amended to read:

38 2365. (a) The board shall establish criteria for the acceptance,  
39 denial, or termination of participants in the diversion program.  
40 Unless ordered by the board as a condition of disciplinary

1 probation, only those participants who have voluntarily requested  
2 diversion treatment and supervision by a committee shall  
3 participate in the diversion program.

4 (b) A participant who is not the subject of a current investigation  
5 may self-refer to the diversion program on a confidential basis,  
6 except as provided in subdivision (f).

7 (c) A participant under current investigation by the board may  
8 also request entry into the diversion program by contacting the  
9 board's Diversion Program Manager. The Diversion Program  
10 Manager may refer the participant requesting participation in the  
11 program to a diversion evaluation committee for evaluation of  
12 eligibility. Prior to authorizing a licentiate to enter into the  
13 diversion program, the Diversion Program Manager may require  
14 the licentiate, while under current investigation for any violations  
15 of the Medical Practice Act or other violations, to execute a  
16 statement of understanding that states that the licentiate understands  
17 that his or her violations of the Medical Practice Act or other  
18 statutes that would otherwise be the basis for discipline may still  
19 be investigated and the subject of disciplinary action.

20 (d) If the reasons for a current investigation of a participant are  
21 based primarily on the self-administration of any controlled  
22 substance or dangerous drugs or alcohol under Section 2239, or  
23 the illegal possession, prescription, or nonviolent procurement of  
24 any controlled substance or dangerous drugs for self-administration  
25 that does not involve actual, direct harm to the public, the board  
26 may close the investigation without further action if the licentiate  
27 is accepted into the board's diversion program and successfully  
28 completes the requirements of the program. If the participant  
29 withdraws or is terminated from the program by the program  
30 manager, the investigation may be reopened and disciplinary action  
31 imposed, if warranted, as determined by the board.

32 (e) Neither acceptance nor participation in the diversion program  
33 shall preclude the board from investigating or continuing to  
34 investigate, or taking disciplinary action or continuing to take  
35 disciplinary action against, any participant for any unprofessional  
36 conduct committed before, during, or after participation in the  
37 diversion program.

38 (f) All participants shall sign an agreement of understanding  
39 that the withdrawal or termination from the diversion program at  
40 a time when the program manager determines the licentiate presents

1 a threat to the public's health and safety shall result in the  
2 utilization by the board of diversion treatment records in  
3 disciplinary or criminal proceedings.

4 (g) Any participant terminated from the diversion program for  
5 failure to comply with program requirements is subject to  
6 disciplinary action by the board for acts committed before, during,  
7 and after participation in the diversion program. A participant who  
8 has been under investigation by the board and has been terminated  
9 from the diversion program by the program manager shall be  
10 reported by the program manager to the board.

11 SEC. 11. Section 2366 of the Business and Professions Code  
12 is amended to read:

13 2366. A committee created under this article operates in an  
14 advisory role to the diversion program manager. Each committee  
15 shall have the following duties and responsibilities:

16 (a) To evaluate those licensees who request participation in the  
17 program according to the guidelines prescribed by the board, and  
18 to make recommendations to the program manager.

19 (b) To review and designate those treatment facilities and  
20 services to which a participant in the program may be referred,  
21 and to make recommendations to the program manager.

22 (c) To receive and review information concerning participants  
23 in the program.

24 (d) To consider whether each participant in the treatment  
25 program may safely continue or resume the practice of medicine,  
26 and to make recommendations to the program manager.

27 (e) To prepare quarterly reports to be submitted to the board,  
28 which include, but are not limited to, information concerning the  
29 number of cases accepted, denied, or terminated with compliance  
30 or noncompliance and a cost analysis of the program.

31 (f) To promote the program to the public and within the  
32 profession, including providing all current licentiates with written  
33 information concerning the program.

34 (g) To perform such other related duties as the board may by  
35 regulation require.

36 SEC. 12. Section 2367 of the Business and Professions Code  
37 is amended to read:

38 2367. (a) Each licensee who requests participation in a  
39 treatment program shall agree to cooperate with the treatment  
40 program designed by the program manager. The committee shall

1 inform each participant in the program of the procedures followed,  
2 the rights and responsibilities of the participant, and the possible  
3 results of noncompliance with the program. Any failure to comply  
4 with the treatment program may result in termination of  
5 participation.

6 (b) Participation in a program under this article shall not be a  
7 defense to any disciplinary action which may be taken by the board.  
8 Further, no provision of this article shall preclude the board from  
9 commencing disciplinary action against a licensee who is  
10 terminated from a program established pursuant to this article.

11 SEC. 13. Section 2369 of the Business and Professions Code  
12 is amended to read:

13 2369. (a) After the program manager, in his or her discretion,  
14 has determined that a participant has been rehabilitated and the  
15 program is completed, the program manager shall purge and  
16 destroy all records pertaining to the participation in a treatment  
17 program.

18 (b) Except as authorized by subdivision (f) of Section 2365, all  
19 board and committee records and records of proceedings pertaining  
20 to the treatment of a participant in a program shall be confidential  
21 and are not subject to discovery or subpoena except in the case of  
22 discovery or subpoena in any criminal proceeding.

23 SEC. 14. Section 2663 of the Business and Professions Code  
24 is amended to read:

25 2663. The board shall establish and administer a diversion  
26 program for the rehabilitation of physical therapists and physical  
27 therapist assistants whose competency is impaired due to the abuse  
28 of drugs or alcohol. The board may contract with any other state  
29 agency or a private organization to perform its duties under this  
30 article. The board may establish one or more diversion evaluation  
31 committees to assist it in carrying out its duties under this article.  
32 Any diversion evaluation committee established by the board shall  
33 operate in an advisory role to the diversion program manager, as  
34 designated by the executive officer of the board.

35 SEC. 15. Section 2665 of the Business and Professions Code  
36 is amended to read:

37 2665. Each diversion evaluation committee has the following  
38 duties and responsibilities:

39 (a) To evaluate physical therapists and physical therapist  
40 assistants who request participation in the program and to make

1 recommendations to the program manager. In making  
2 recommendations, the committee shall consider any  
3 recommendations from professional consultants on the admission  
4 of applicants to the diversion program.

5 (b) To review and designation of treatment facilities to which  
6 physical therapists and physical therapist assistants in the diversion  
7 program may be referred, and to make recommendations to the  
8 program manager.

9 (c) The receipt and review of information concerning physical  
10 therapists and physical therapist assistants participating in the  
11 program.

12 (d) Calling meetings as necessary to consider the requests of  
13 physical therapists and physical therapist assistants to participate  
14 in the diversion program, to consider reports regarding participants  
15 in the program, and to consider any other matters referred to it by  
16 the board.

17 (e) To consider whether each participant in the diversion  
18 program may with safety continue or resume the practice of  
19 physical therapy, and to make recommendations to the program  
20 manager.

21 (f) To make recommendations to the program manager regarding  
22 the terms and conditions of the diversion agreement for each  
23 physical therapist and physical therapist assistant participating in  
24 the program, including treatment, supervision, and monitoring  
25 requirements.

26 (g) Holding a general meeting at least twice a year, which shall  
27 be open and public, to evaluate the diversion program's progress,  
28 to prepare reports to be submitted to the board, and to suggest  
29 proposals for changes in the diversion program.

30 (h) For the purposes of Division 3.6 (commencing with Section  
31 810) of Title 1 of the Government Code, any member of a diversion  
32 evaluation committee shall be considered a public employee. No  
33 board or diversion evaluation committee member, contractor, or  
34 agent thereof, shall be liable for any civil damage because of acts  
35 or omissions which may occur while acting in good faith in a  
36 program established pursuant to this article.

37 SEC. 16. Section 2666 of the Business and Professions Code  
38 is amended to read:

39 2666. (a) Criteria for acceptance into the diversion program  
40 shall include all of the following:

1 (1) The applicant shall be licensed as a physical therapist or  
2 approved as a physical therapist assistant by the board and shall  
3 be a resident of California.

4 (2) The applicant shall be found to abuse dangerous drugs or  
5 alcoholic beverages in a manner which may affect his or her ability  
6 to practice physical therapy safely or competently.

7 (3) The applicant shall have voluntarily requested admission to  
8 the program or shall be accepted into the program in accordance  
9 with terms and conditions resulting from a disciplinary action.

10 (4) The applicant shall agree to undertake any medical or  
11 psychiatric examination ordered to evaluate the applicant for  
12 participation in the program.

13 (5) The applicant shall cooperate with the program by providing  
14 medical information, disclosure authorizations, and releases of  
15 liability as may be necessary for participation in the program.

16 (6) The applicant shall agree in writing to cooperate with all  
17 elements of the treatment program designed for him or her.

18 Any applicant may be denied participation in the program if the  
19 board or the program manager determines that the applicant will  
20 not substantially benefit from participation in the program or that  
21 the applicant's participation in the program creates too great a risk  
22 to the public health, safety, or welfare.

23 (b) A participant may be terminated from the program for any  
24 of the following reasons:

25 (1) The participant has successfully completed the treatment  
26 program.

27 (2) The participant has failed to comply with the treatment  
28 program designated for him or her.

29 (3) The participant fails to meet any of the criteria set forth in  
30 subdivision (a) or (c).

31 (4) It is determined that the participant has not substantially  
32 benefited from participation in the program or that his or her  
33 continued participation in the program creates too great a risk to  
34 the public health, safety, or welfare. Whenever an applicant is  
35 denied participation in the program or a participant is terminated  
36 from the program for any reason other than the successful  
37 completion of the program, and it is determined that the continued  
38 practice of physical therapy by that individual creates too great a  
39 risk to the public health, safety, and welfare, that fact shall be  
40 reported to the executive officer of the board and all documents



1 and information pertaining to and supporting that conclusion shall  
2 be provided to the executive officer. The matter may be referred  
3 for investigation and disciplinary action by the board. Each physical  
4 therapist or physical therapy assistant who requests participation  
5 in a diversion program shall agree to cooperate with the recovery  
6 program designed for him or her. Any failure to comply with that  
7 program may result in termination of participation in the program.

8 The diversion evaluation committee shall inform each participant  
9 in the program of the procedures followed in the program, of the  
10 rights and responsibilities of a physical therapist or physical  
11 therapist assistant in the program, and the possible results of  
12 noncompliance with the program.

13 (c) In addition to the criteria and causes set forth in subdivision  
14 (a), the board may set forth in its regulations additional criteria for  
15 admission to the program or causes for termination from the  
16 program.

17 SEC. 17. Section 2770.1 of the Business and Professions Code  
18 is amended to read:

19 2770.1. As used in this article:

20 (a) "Board" means the Board of Registered Nursing.

21 (b) "Committee" means a diversion evaluation committee  
22 created by this article.

23 (c) "Program manager" means the staff manager of the diversion  
24 program, as designated by the executive officer of the board. *The*  
25 *program manager shall have background experience in dealing*  
26 *with substance abuse issues.*

27 SEC. 18. Section 2770.8 of the Business and Professions Code  
28 is amended to read:

29 2770.8. A committee created under this article operates in an  
30 advisory role to the diversion program manager. Each committee  
31 shall have the following duties and responsibilities:

32 (a) To evaluate those registered nurses who request participation  
33 in the program according to the guidelines prescribed by the board,  
34 and to make recommendations to the program manager.

35 (b) To review and designate those treatment services to which  
36 registered nurses in a diversion program may be referred, and to  
37 make recommendations to the program manager.

38 (c) To receive and review information concerning a registered  
39 nurse participating in the program.

1 (d) To consider in the case of each registered nurse participating  
2 in a program whether he or she may with safety continue or resume  
3 the practice of nursing, and to make recommendations to the  
4 program manager.

5 (e) To call meetings as necessary to consider the requests of  
6 registered nurses to participate in a diversion program, and to  
7 consider reports regarding registered nurses participating in a  
8 program.

9 (f) To make recommendations to the program manager regarding  
10 the terms and conditions of the diversion agreement for each  
11 registered nurse participating in the program, including treatment,  
12 supervision, and monitoring requirements.

13 SEC. 19. Section 2770.11 of the Business and Professions  
14 Code is amended to read:

15 2770.11. (a) Each registered nurse who requests participation  
16 in a diversion program shall agree to cooperate with the  
17 rehabilitation program designed by the program manager. Any  
18 failure to comply with the provisions of a rehabilitation program  
19 may result in termination of the registered nurse's participation in  
20 a program. The name and license number of a registered nurse  
21 who is terminated for any reason, other than successful completion,  
22 shall be reported to the board's enforcement program.

23 (b) If the program manager determines that a registered nurse,  
24 who is denied admission into the program or terminated from the  
25 program, presents a threat to the public or his or her own health  
26 and safety, the program manager shall report the name and license  
27 number, along with a copy of all diversion records for that  
28 registered nurse, to the board's enforcement program. The board  
29 may use any of the records it receives under this subdivision in  
30 any disciplinary proceeding.

31 SEC. 20. Section 2770.12 of the Business and Professions  
32 Code is amended to read:

33 2770.12. (a) After the program manager in his or her discretion  
34 has determined that a registered nurse has successfully completed  
35 the diversion program, all records pertaining to the registered  
36 nurse's participation in the diversion program shall be purged.

37 (b) All board and committee records and records of a proceeding  
38 pertaining to the participation of a registered nurse in the diversion  
39 program shall be kept confidential and are not subject to discovery

1 or subpoena, except as specified in subdivision (b) of Section  
2 2770.11 and subdivision (c).

3 (c) A registered nurse shall be deemed to have waived any rights  
4 granted by any laws and regulations relating to confidentiality of  
5 the diversion program, if he or she does any of the following:

6 (1) Presents information relating to any aspect of the diversion  
7 program during any stage of the disciplinary process subsequent  
8 to the filing of an accusation, statement of issues, or petition to  
9 compel an examination pursuant to Article 12.5 (commencing with  
10 Section 820) of Chapter 1. The waiver shall be limited to  
11 information necessary to verify or refute any information disclosed  
12 by the registered nurse.

13 (2) Files a lawsuit against the board relating to any aspect of  
14 the diversion program.

15 (3) Claims in defense to a disciplinary action, based on a  
16 complaint that led to the registered nurse's participation in the  
17 diversion program, that he or she was prejudiced by the length of  
18 time that passed between the alleged violation and the filing of the  
19 accusation. The waiver shall be limited to information necessary  
20 to document the length of time the registered nurse participated in  
21 the diversion program.

22 *SEC. 21. Section 3501 of the Business and Professions Code*  
23 *is amended to read:*

24 3501. As used in this chapter:

25 (a) "Board" means the ~~Division of Licensing of the Medical~~  
26 Board of California.

27 (b) "Approved program" means a program for the education of  
28 physician assistants ~~which~~ *that* has been formally approved by the  
29 committee.

30 (c) "Trainee" means a person who is currently enrolled in an  
31 approved program.

32 (d) "Physician assistant" means a person who meets the  
33 requirements of this chapter and is licensed by the committee.

34 (e) "Supervising physician" means a physician and surgeon  
35 licensed by the board or by the Osteopathic Medical Board of  
36 California who supervises one or more physician assistants, who  
37 possesses a current valid license to practice medicine, and who is  
38 not currently on disciplinary probation for improper use of a  
39 physician assistant.

1 (f) “Supervision” means that a licensed physician and surgeon  
2 oversees the activities of, and accepts responsibility for, the medical  
3 services rendered by a physician assistant.

4 (g) “Committee” or “examining committee” means the Physician  
5 Assistant Committee.

6 (h) “Regulations” means the rules and regulations as contained  
7 in Chapter 13.8 (commencing with Section 1399.500) of Title 16  
8 of the California Code of Regulations.

9 (i) “Routine visual screening” means uninvaseive  
10 nonpharmacological simple testing for visual acuity, visual field  
11 defects, color blindness, and depth perception.

12 (j) *“Program manager” means the staff manager of the*  
13 *diversion program, as designated by the executive officer of the*  
14 *board. The program manager shall have background experience*  
15 *in dealing with substance abuse issues.*

16 ~~SEC. 21.~~

17 *SEC. 22.* Section 3534.1 of the Business and Professions Code  
18 is amended to read:

19 3534.1. The examining committee shall establish and  
20 administer a diversion program for the rehabilitation of physician  
21 assistants whose competency is impaired due to the abuse of drugs  
22 or alcohol. The examining committee may contract with any other  
23 state agency or a private organization to perform its duties under  
24 this article. The examining committee may establish one or more  
25 diversion evaluation committees to assist it in carrying out its  
26 duties under this article. As used in this article, “committee” means  
27 a diversion evaluation committee. A committee created under this  
28 article operates in an advisory role to the diversion program  
29 manager, as designated by the executive officer of the examining  
30 committee.

31 ~~SEC. 22.~~

32 *SEC. 23.* Section 3534.3 of the Business and Professions Code  
33 is amended to read:

34 3534.3. Each committee has the following duties and  
35 responsibilities:

36 (a) To evaluate physician assistants who request participation  
37 in the program and to make recommendations to the program  
38 manager. In making recommendations, a committee shall consider  
39 any recommendations from professional consultants on the  
40 admission of applicants to the diversion program.

1 (b) To review and designate treatment facilities to which  
2 physician assistants in the diversion program may be referred, and  
3 to make recommendations to the program manager.

4 (c) The receipt and review of information concerning physician  
5 assistants participating in the program.

6 (d) To call meetings as necessary to consider the requests of  
7 physician assistants to participate in the diversion program, to  
8 consider reports regarding participants in the program, and to  
9 consider any other matters referred to it by the examining  
10 committee.

11 (e) To consider whether each participant in the diversion  
12 program may with safety continue or resume the practice of  
13 medicine, and to make recommendations to the program manager.

14 (f) To make recommendations to the program manager regarding  
15 the terms and conditions of the diversion agreement for each  
16 physician assistant participating in the program, including  
17 treatment, supervision, and monitoring requirements.

18 (g) To hold a general meeting at least twice a year, which shall  
19 be open and public, to evaluate the diversion program's progress,  
20 to prepare reports to be submitted to the examining committee,  
21 and to suggest proposals for changes in the diversion program.

22 (h) For the purposes of Division 3.6 (commencing with Section  
23 810) of Title 1 of the Government Code, any member of a  
24 committee shall be considered a public employee. No examining  
25 committee or committee member, contractor, or agent thereof,  
26 shall be liable for any civil damage because of acts or omissions  
27 which may occur while acting in good faith in a program  
28 established pursuant to this article.

29 ~~SEC. 23.~~

30 *SEC. 24.* Section 3534.4 of the Business and Professions Code  
31 is amended to read:

32 3534.4. Criteria for acceptance into the diversion program shall  
33 include all of the following: (a) the applicant shall be licensed as  
34 a physician assistant by the examining committee and shall be a  
35 resident of California; (b) the applicant shall be found to abuse  
36 dangerous drugs or alcoholic beverages in a manner which may  
37 affect his or her ability to practice medicine safely or competently;  
38 (c) the applicant shall have voluntarily requested admission to the  
39 program or shall be accepted into the program in accordance with  
40 terms and conditions resulting from a disciplinary action; (d) the

1 applicant shall agree to undertake any medical or psychiatric  
2 examination ordered to evaluate the applicant for participation in  
3 the program; (e) the applicant shall cooperate with the program  
4 by providing medical information, disclosure authorizations, and  
5 releases of liability as may be necessary for participation in the  
6 program; and (f) the applicant shall agree in writing to cooperate  
7 with all elements of the treatment program designed for him or  
8 her.

9 An applicant may be denied participation in the program if the  
10 examining committee or the program manager determines that the  
11 applicant will not substantially benefit from participation in the  
12 program or that the applicant's participation in the program creates  
13 too great a risk to the public health, safety, or welfare.

14 ~~SEC. 24.~~

15 *SEC. 25.* Section 3534.9 of the Business and Professions Code  
16 is amended to read:

17 3534.9. If the examining committee contracts with any other  
18 entity to carry out this section, the executive officer of the  
19 examining committee or the program manager shall review the  
20 activities and performance of the contractor on a biennial basis.  
21 As part of this review, the examining committee shall review files  
22 of participants in the program. However, the names of participants  
23 who entered the program voluntarily shall remain confidential,  
24 except when the review reveals misdiagnosis, case  
25 mismanagement, or noncompliance by the participant.

MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** SB 1454  
**Author:** Ridley-Thomas  
**Bill Date:** June 16, 2008, amended  
**Subject:** Advertising, OSM, Cosmetic Surgery Standards  
**Sponsor:** Author

**STATUS OF BILL:**

This bill is currently in the Assembly Appropriations Committee.

**DESCRIPTION OF CURRENT LEGISLATION:**

This bill requires health care practitioners to provide specified information on all advertisements. This bill allows a health care practitioner who is practicing in an outpatient setting to wear a name tag which includes his or her name and license status or provide the information verbally. This bill requires the Medical Board (Board) to adopt regulations on the appropriate level of physician availability necessary within clinics using laser or intense pulse light devices for elective cosmetic surgery. This bill requires the Board post on its website a fact sheet to educate the public about cosmetic surgery and the risks involved with such surgeries. This bill places the investigation of unlicensed activity or corporate practice violations in settings using laser or intense light as a priority.

**ANALYSIS:**

This bill aims to further public protection by strengthening the regulation and oversight of surgical centers and clinics performing cosmetic procedures, and to ensure that quality of care standards are in place at these clinics and they are monitored by the appropriate credentialing agency.

The American Society of Plastic Surgeons (ASPS) reports that the top five surgical procedures of the almost 12 million cosmetic procedures performed in 2007 were breast augmentation, liposuction, nose reshaping, eyelid surgery, and tummy tuck. Less invasive procedures such as laser surgery and Botox are increasingly becoming popular as well. As a result, consumers are inundated with advertisements for these services. Although the federal Food and Drug Administration oversees the safety of machines and skin-care products used, there is little regulation of these medical spas to guarantee that patients are aware of the potential risks associated with all treatments.

Many physicians who are performing cosmetic surgery have not been trained specifically in that field, and are conducting increasingly complex procedures in settings outside of hospitals, such as outpatient surgery centers and doctors' offices. It is also common for doctors performing cosmetic surgeries to receive their training only from weekend courses and instructional videos. Currently, there are no uniform standards for physician training related to cosmetic surgery. The author believes regulation of allied health professionals in outpatient settings and the settings themselves needs to be strengthened as well.

Prior attempts to regulate the practice of cosmetic surgery have included SB 1423 (Figueroa) Chapter 873, Statutes of 2006, which required the Board in conjunction with the Board of Registered Nursing to promulgate regulations to implement changes relating to the use of laser or intense pulse light devices for cosmetic procedures by physicians, nurses, and physician assistants. SB 835 (Figueroa) of 1999, would have enacted the Cosmetic Surgery Patient Disclosure Act, which would have required physicians who perform cosmetic surgery to provide the Board with information on their training, board certifications, and the number of procedures performed. SB 836 (Figueroa) Chapter 856, Statutes of 1999, expanded and revised the prohibition against fraudulent advertising by health practitioners.

This bill would require the following:

- Advertising by a physician and other health care practitioners must include the type of degree received upon graduation from professional training. This will provide to consumers information to understand the type of healthcare practitioner advertising services. It also specifies types of advertisements that do and do not require this information.
- Health care practitioners shall disclose, while working, his or her name and practitioner's license status, as granted by this state, on a name tag in at least 18-point type or verbally.
- The Board must make the investigation of unlicensed activity or corporate practice of medicine violations in outpatient clinics one of its priorities.
- The Board must adopt regulations regarding the appropriate level of physician supervision for health professionals needed within clinics or other settings using laser or intense pulse light devices. This must be done by July 1, 2009.
- The Board must post on its website a fact sheet to educate the public about cosmetic surgery and its risks.
- The Board must additionally notify the public whether a setting is licensed, and that the setting's status.
- The Board or the accrediting agency must periodically inspect every outpatient setting. Cycles are to be set in regulation. The results of these inspections must be kept on file and shall be available for public inspection.
- The Board must evaluate the performance of an approved accreditation agency no less than every three years, this section is currently permissive.



Amendments to this bill clarify the definition of “advertisement” for these purposes and specify exclusions from this requirement. Advertisements shall not include a medical directory released by a health care service plan or a health insurer, a billing statement from a health care practitioner to a patient, an appointment reminder from a health care practitioner to a patient.

**FISCAL:** \$723,000 start up costs associated with establishment of 6.0 positions within the Office of Safe Medicine (4.0 Senior Investigators, 1.0 Supervising Investigator and 1.0 Office Technician) dedicated solely to these mandates.  
\$596,000 on-going cost.

**POSITION:** Support

July 17, 2008

AMENDED IN ASSEMBLY JUNE 16, 2008

AMENDED IN SENATE APRIL 7, 2008

**SENATE BILL**

**No. 1454**

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**Introduced by Senator Ridley-Thomas**

February 21, 2008

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An act to amend Sections 651, 680, and 2023.5 of, and to add Section 2027.5 to, the Business and Professions Code, and to amend Sections 1248.15, 1248.2, 1248.25, 1248.35, and 1248.5 of the Health and Safety Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1454, as amended, Ridley-Thomas. Healing arts: outpatient settings.

(1) Existing law provides that it is unlawful for healing arts licensees to disseminate or cause to be disseminated any form of public communication, as defined, containing a false, fraudulent, misleading, or deceptive statement or image to induce the provision of services or the rendering of products relating to a professional practice or business for which he or she is licensed. Existing law authorizes advertising by these healing arts licensees to include certain general information. A violation of these provisions is a misdemeanor.

This bill would impose specific advertising requirements on certain healing arts licensees. By changing the definition of a crime, this bill would impose a state-mandated local program.

(2) Existing law requires a health care practitioner to disclose, while working, his or her name and license status; on a specified name tag. However, existing law exempts from this requirement a health care practitioner whose license is prominently displayed in a practice or office.

~~This bill would exclude from that exemption a health care practitioner working in an outpatient clinic~~ *allow a health care practitioner to disclose his or her name and practitioner's license status verbally. The bill would delete the exemption for a health care practitioner whose license is prominently displayed in a practice or office.*

(3) Existing law requires the Medical Board of California, in conjunction with the Board of Registered Nursing, and in consultation with the Physician Assistant Committee and professionals in the field, to review issues and problems relating to the use of laser or intense light pulse devices for elective cosmetic procedures by physicians and surgeons, nurses, and physician assistants.

This bill would require the Medical Board of California to establish, as a priority, the investigation of unlicensed activity or other specified violations in clinics or other settings using laser or intense pulse light devices. The bill would also require the board to adopt regulations by July 1, 2009, regarding the appropriate level of physician-supervision ~~availability~~ needed within clinics or other settings using laser or intense pulse light devices for elective cosmetic procedures.

(4) Existing law requires the Medical Board of California to post on the Internet specified information regarding licensed physicians and surgeons.

This bill would require the board to post on its *Internet* Web site an easy to understand factsheet to educate the public about cosmetic surgery and procedures, as specified.

(5) Existing law requires the Medical Board of California, as successor to the Division of Licensing of the Medical Board of California, to adopt standards for accreditation of outpatient settings, as defined, and, in approving accreditation agencies to perform accreditation of outpatient settings, ensure that the certification program shall, at a minimum, include standards for specified aspects of the settings' operations.

This bill would include, among those specified aspects, the submission for approval by an accrediting agency at the time of accreditation, a detailed plan, standardized procedures, and protocols to be followed in the event of serious complications or side effects from surgery, as specified.

(6) Existing law also requires the Medical Board of California to obtain and maintain a list of all accredited, certified, and licensed outpatient settings, and to notify the public, upon inquiry, whether a

setting is accredited, certified, or licensed, or whether the setting's accreditation, certification, or license has been revoked.

This bill would require the board to notify the public whether a setting is accredited, certified, or licensed, or the setting's accreditation, certification, or license has been revoked, suspended, or placed on probation, or the setting has received a reprimand by the accreditation agency.

(7) Existing law requires accreditation of an outpatient setting to be denied by the accreditation agency if the setting does not meet specified standards. An outpatient setting may reapply for accreditation at any time after receiving notification of the denial.

This bill would require the accrediting agency to immediately report to the Medical Board of California if the outpatient setting's certificate for accreditation has been denied.

(8) Existing law authorizes the Medical Board of California or an accreditation agency to, upon reasonable prior notice and presentation of proper identification, enter and inspect any outpatient setting that is accredited by an accreditation agency at any reasonable time to ensure compliance with, or investigate an alleged violation of, any standard of the accreditation agency or any provision of the specified law.

This bill would delete the requirement that the board give reasonable prior notice and presentation of proper identification to perform those inspections. The bill would also require that every outpatient setting that is accredited be periodically inspected by the board or the accreditation agency, as specified.

(9) Existing law authorizes the Medical Board of California to evaluate the performance of an approved accreditation agency no less than every ~~three~~ 3 years, or in response to complaints against an agency, or complaints against one or more outpatient settings accreditation by an agency that indicates noncompliance by the agency with the standards approved by the board.

This bill would make that evaluation mandatory.

(10) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 651 of the Business and Professions Code is amended to read:

651. (a) It is unlawful for any person licensed under this division or under any initiative act referred to in this division to disseminate or cause to be disseminated any form of public communication containing a false, fraudulent, misleading, or deceptive statement, claim, or image for the purpose of or likely to induce, directly or indirectly, the rendering of professional services or furnishing of products in connection with the professional practice or business for which he or she is licensed. A “public communication” as used in this section includes, but is not limited to, communication by means of mail, television, radio, motion picture, newspaper, book, list or directory of healing arts practitioners, Internet, or other electronic communication.

(b) A false, fraudulent, misleading, or deceptive statement, claim, or image includes a statement or claim that does any of the following:

(1) Contains a misrepresentation of fact.

(2) Is likely to mislead or deceive because of a failure to disclose material facts.

(3) (A) Is intended or is likely to create false or unjustified expectations of favorable results, including the use of any photograph or other image that does not accurately depict the results of the procedure being advertised or that has been altered in any manner from the image of the actual subject depicted in the photograph or image.

(B) Use of any photograph or other image of a model without clearly stating in a prominent location in easily readable type the fact that the photograph or image is of a model is a violation of subdivision (a). For purposes of this paragraph, a model is anyone other than an actual patient, who has undergone the procedure being advertised, of the licensee who is advertising for his or her services.

(C) Use of any photograph or other image of an actual patient that depicts or purports to depict the results of any procedure, or presents “before” and “after” views of a patient, without specifying in a prominent location in easily readable type size what procedures were performed on that patient is a violation of subdivision (a).

1 Any “before” and “after” views (i) shall be comparable in  
2 presentation so that the results are not distorted by favorable poses,  
3 lighting, or other features of presentation, and (ii) shall contain a  
4 statement that the same “before” and “after” results may not occur  
5 for all patients.

6 (4) Relates to fees, other than a standard consultation fee or a  
7 range of fees for specific types of services, without fully and  
8 specifically disclosing all variables and other material factors.

9 (5) Contains other representations or implications that in  
10 reasonable probability will cause an ordinarily prudent person to  
11 misunderstand or be deceived.

12 (6) Makes a claim either of professional superiority or of  
13 performing services in a superior manner, unless that claim is  
14 relevant to the service being performed and can be substantiated  
15 with objective scientific evidence.

16 (7) Makes a scientific claim that cannot be substantiated by  
17 reliable, peer reviewed, published scientific studies.

18 (8) Includes any statement, endorsement, or testimonial that is  
19 likely to mislead or deceive because of a failure to disclose material  
20 facts.

21 (c) Any price advertisement shall be exact, without the use of  
22 phrases, including, but not limited to, “as low as,” “and up,”  
23 “lowest prices,” or words or phrases of similar import. Any  
24 advertisement that refers to services, or costs for services, and that  
25 uses words of comparison shall be based on verifiable data  
26 substantiating the comparison. Any person so advertising shall be  
27 prepared to provide information sufficient to establish the accuracy  
28 of that comparison. Price advertising shall not be fraudulent,  
29 deceitful, or misleading, including statements or advertisements  
30 of bait, discount, premiums, gifts, or any statements of a similar  
31 nature. In connection with price advertising, the price for each  
32 product or service shall be clearly identifiable. The price advertised  
33 for products shall include charges for any related professional  
34 services, including dispensing and fitting services, unless the  
35 advertisement specifically and clearly indicates otherwise.

36 (d) Any person so licensed shall not compensate or give anything  
37 of value to a representative of the press, radio, television, or other  
38 communication medium in anticipation of, or in return for,  
39 professional publicity unless the fact of compensation is made  
40 known in that publicity.

1 (e) Any person so licensed may not use any professional card,  
2 professional announcement card, office sign, letterhead, telephone  
3 directory listing, medical list, medical directory listing, or a similar  
4 professional notice or device if it includes a statement or claim  
5 that is false, fraudulent, misleading, or deceptive within the  
6 meaning of subdivision (b).

7 (f) Any person so licensed who violates this section is guilty of  
8 a misdemeanor. A bona fide mistake of fact shall be a defense to  
9 this subdivision, but only to this subdivision.

10 (g) Any violation of this section by a person so licensed shall  
11 constitute good cause for revocation or suspension of his or her  
12 license or other disciplinary action.

13 (h) Advertising by any person so licensed may include the  
14 following:

15 (1) A statement of the name of the practitioner.

16 (2) A statement of addresses and telephone numbers of the  
17 offices maintained by the practitioner.

18 (3) A statement of office hours regularly maintained by the  
19 practitioner.

20 (4) A statement of languages, other than English, fluently spoken  
21 by the practitioner or a person in the practitioner's office.

22 (5) (A) A statement that the practitioner is certified by a private  
23 or public board or agency or a statement that the practitioner limits  
24 his or her practice to specific fields.

25 (i) For the purposes of this section, a dentist licensed under  
26 Chapter 4 (commencing with Section 1600) may not hold himself  
27 or herself out as a specialist, or advertise membership in or  
28 specialty recognition by an accrediting organization, unless the  
29 practitioner has completed a specialty education program approved  
30 by the American Dental Association and the Commission on Dental  
31 Accreditation, is eligible for examination by a national specialty  
32 board recognized by the American Dental Association, or is a  
33 diplomate of a national specialty board recognized by the American  
34 Dental Association.

35 (ii) A dentist licensed under Chapter 4 (commencing with  
36 Section 1600) shall not represent to the public or advertise  
37 accreditation either in a specialty area of practice or by a board  
38 not meeting the requirements of clause (i) unless the dentist has  
39 attained membership in or otherwise been credentialed by an  
40 accrediting organization that is recognized by the board as a bona

1 fide organization for that area of dental practice. In order to be  
2 recognized by the board as a bona fide accrediting organization  
3 for a specific area of dental practice other than a specialty area of  
4 dentistry authorized under clause (i), the organization shall  
5 condition membership or credentialing of its members upon all of  
6 the following:

7 (I) Successful completion of a formal, full-time advanced  
8 education program that is affiliated with or sponsored by a  
9 university based dental school and is beyond the dental degree at  
10 a graduate or postgraduate level.

11 (II) Prior didactic training and clinical experience in the specific  
12 area of dentistry that is greater than that of other dentists.

13 (III) Successful completion of oral and written examinations  
14 based on psychometric principles.

15 (iii) Notwithstanding the requirements of clauses (i) and (ii), a  
16 dentist who lacks membership in or certification, diplomate status,  
17 other similar credentials, or completed advanced training approved  
18 as bona fide either by an American Dental Association recognized  
19 accrediting organization or by the board, may announce a practice  
20 emphasis in any other area of dental practice only if the dentist  
21 incorporates in capital letters or some other manner clearly  
22 distinguishable from the rest of the announcement, solicitation, or  
23 advertisement that he or she is a general dentist.

24 (iv) A statement of certification by a practitioner licensed under  
25 Chapter 7 (commencing with Section 3000) shall only include a  
26 statement that he or she is certified or eligible for certification by  
27 a private or public board or parent association recognized by that  
28 practitioner's licensing board.

29 (B) A physician and surgeon licensed under Chapter 5  
30 (commencing with Section 2000) by the Medical Board of  
31 California may include a statement that he or she limits his or her  
32 practice to specific fields, but shall not include a statement that he  
33 or she is certified or eligible for certification by a private or public  
34 board or parent association, including, but not limited to, a  
35 multidisciplinary board or association, unless that board or  
36 association is (i) an American Board of Medical Specialties  
37 member board, (ii) a board or association with equivalent  
38 requirements approved by that physician and surgeon's licensing  
39 board, or (iii) a board or association with an Accreditation Council  
40 for Graduate Medical Education approved postgraduate training



1 program that provides complete training in that specialty or  
2 subspecialty. A physician and surgeon licensed under Chapter 5  
3 (commencing with Section 2000) by the Medical Board of  
4 California who is certified by an organization other than a board  
5 or association referred to in clause (i), (ii), or (iii) shall not use the  
6 term “board certified” in reference to that certification, unless the  
7 physician and surgeon is also licensed under Chapter 4  
8 (commencing with Section 1600) and the use of the term “board  
9 certified” in reference to that certification is in accordance with  
10 subparagraph (A). A physician and surgeon licensed under Chapter  
11 5 (commencing with Section 2000) by the Medical Board of  
12 California who is certified by a board or association referred to in  
13 clause (i), (ii), or (iii) shall not use the term “board certified” unless  
14 the full name of the certifying board is also used and given  
15 comparable prominence with the term “board certified” in the  
16 statement.

17 For purposes of this subparagraph, a “multidisciplinary board  
18 or association” means an educational certifying body that has a  
19 psychometrically valid testing process, as determined by the  
20 Medical Board of California, for certifying medical doctors and  
21 other health care professionals that is based on the applicant’s  
22 education, training, and experience.

23 For purposes of the term “board certified,” as used in this  
24 subparagraph, the terms “board” and “association” mean an  
25 organization that is an American Board of Medical Specialties  
26 member board, an organization with equivalent requirements  
27 approved by a physician and surgeon’s licensing board, or an  
28 organization with an Accreditation Council for Graduate Medical  
29 Education approved postgraduate training program that provides  
30 complete training in a specialty or subspecialty.

31 The Medical Board of California shall adopt regulations to  
32 establish and collect a reasonable fee from each board or  
33 association applying for recognition pursuant to this subparagraph.  
34 The fee shall not exceed the cost of administering this  
35 subparagraph. Notwithstanding Section 2 of Chapter 1660 of the  
36 Statutes of 1990, this subparagraph shall become operative July  
37 1, 1993. However, an administrative agency or accrediting  
38 organization may take any action contemplated by this  
39 subparagraph relating to the establishment or approval of specialist  
40 requirements on and after January 1, 1991.

(C) A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California may include a statement that he or she is certified or eligible or qualified for certification by a private or public board or parent association, including, but not limited to, a multidisciplinary board or association, if that board or association meets one of the following requirements: (i) is approved by the Council on Podiatric Medical Education, (ii) is a board or association with equivalent requirements approved by the California Board of Podiatric Medicine, or (iii) is a board or association with the Council on Podiatric Medical Education approved postgraduate training programs that provide training in podiatric medicine and podiatric surgery. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by a board or association referred to in clause (i), (ii), or (iii) shall not use the term “board certified” unless the full name of the certifying board is also used and given comparable prominence with the term “board certified” in the statement. A doctor of podiatric medicine licensed under Chapter 5 (commencing with Section 2000) by the Medical Board of California who is certified by an organization other than a board or association referred to in clause (i), (ii), or (iii) shall not use the term “board certified” in reference to that certification.

For purposes of this subparagraph, a “multidisciplinary board or association” means an educational certifying body that has a psychometrically valid testing process, as determined by the California Board of Podiatric Medicine, for certifying doctors of podiatric medicine that is based on the applicant’s education, training, and experience. For purposes of the term “board certified,” as used in this subparagraph, the terms “board” and “association” mean an organization that is a Council on Podiatric Medical Education approved board, an organization with equivalent requirements approved by the California Board of Podiatric Medicine, or an organization with a Council on Podiatric Medical Education approved postgraduate training program that provides training in podiatric medicine and podiatric surgery.

The California Board of Podiatric Medicine shall adopt regulations to establish and collect a reasonable fee from each board or association applying for recognition pursuant to this

1 subparagraph, to be deposited in the State Treasury in the Podiatry  
2 Fund, pursuant to Section 2499. The fee shall not exceed the cost  
3 of administering this subparagraph.

4 (6) A statement that the practitioner provides services under a  
5 specified private or public insurance plan or health care plan.

6 (7) A statement of names of schools and postgraduate clinical  
7 training programs from which the practitioner has graduated,  
8 together with the degrees received.

9 (8) A statement of publications authored by the practitioner.

10 (9) A statement of teaching positions currently or formerly held  
11 by the practitioner, together with pertinent dates.

12 (10) A statement of his or her affiliations with hospitals or  
13 clinics.

14 (11) A statement of the charges or fees for services or  
15 commodities offered by the practitioner.

16 (12) A statement that the practitioner regularly accepts  
17 installment payments of fees.

18 (13) Otherwise lawful images of a practitioner, his or her  
19 physical facilities, or of a commodity to be advertised.

20 (14) A statement of the manufacturer, designer, style, make,  
21 trade name, brand name, color, size, or type of commodities  
22 advertised.

23 (15) An advertisement of a registered dispensing optician may  
24 include statements in addition to those specified in paragraphs (1)  
25 to (14), inclusive, provided that any statement shall not violate  
26 subdivision (a), (b), (c), or (e) or any other section of this code.

27 (16) A statement, or statements, providing public health  
28 information encouraging preventative or corrective care.

29 (17) Any other item of factual information that is not false,  
30 fraudulent, misleading, or likely to deceive.

31 (i) Advertising by any person licensed under Chapter 2  
32 (commencing with Section 1000), Chapter 4 (commencing with  
33 Section 1600), Chapter 5 (commencing with Section 2000), Chapter  
34 6 (commencing with Section 2700), Chapter 6.5 (commencing  
35 with Section 2840), Chapter 6.6 (commencing with Section 2900),  
36 Chapter 7 (commencing with Section 3000), Chapter 7.7  
37 (commencing with Section 3500), and Chapter 8 (commencing  
38 with Section 3600) shall include all of the following information:

39 ~~(1) The type of license under which the licensee is practicing.~~

1     ~~(2) The~~ *the* type of degree received upon graduation from  
2 professional training.

3     *(1) For purposes of this subdivision, "advertisement" includes*  
4 *communication by means of mail, television, radio, motion picture,*  
5 *newspaper, book, directory, Internet, or other electronic*  
6 *communication. Advertisements shall not include any of the*  
7 *following:*

8     *(A) A medical directory released by a health care service plan*  
9 *or a health insurer.*

10    *(B) A billing statement from a health care practitioner to a*  
11 *patient.*

12    *(C) An appointment reminder from a health care practitioner*  
13 *to a patient.*

14    *(2) This subdivision shall not apply until January 1, 2010, to*  
15 *any advertisement that is published annually and prior to July 1,*  
16 *2009.*

17    *(3) This subdivision shall not apply to any advertisement or*  
18 *business card disseminated by a health care service plan that is*  
19 *subject to the requirements of Section 1367.26 of the Health and*  
20 *Safety Code.*

21    (i) Each of the healing arts boards and examining committees  
22 within Division 2 shall adopt appropriate regulations to enforce  
23 this section in accordance with Chapter 3.5 (commencing with  
24 Section 11340) of Part 1 of Division 3 of Title 2 of the Government  
25 Code.

26    Each of the healing arts boards and committees and examining  
27 committees within Division 2 shall, by regulation, define those  
28 efficacious services to be advertised by businesses or professions  
29 under their jurisdiction for the purpose of determining whether  
30 advertisements are false or misleading. Until a definition for that  
31 service has been issued, no advertisement for that service shall be  
32 disseminated. However, if a definition of a service has not been  
33 issued by a board or committee within 120 days of receipt of a  
34 request from a licensee, all those holding the license may advertise  
35 the service. Those boards and committees shall adopt or modify  
36 regulations defining what services may be advertised, the manner  
37 in which defined services may be advertised, and restricting  
38 advertising that would promote the inappropriate or excessive use  
39 of health services or commodities. A board or committee shall not,  
40 by regulation, unreasonably prevent truthful, nondeceptive price

1 or otherwise lawful forms of advertising of services or  
2 commodities, by either outright prohibition or imposition of  
3 onerous disclosure requirements. However, any member of a board  
4 or committee acting in good faith in the adoption or enforcement  
5 of any regulation shall be deemed to be acting as an agent of the  
6 state.

7 (k) The Attorney General shall commence legal proceedings in  
8 the appropriate forum to enjoin advertisements disseminated or  
9 about to be disseminated in violation of this section and seek other  
10 appropriate relief to enforce this section. Notwithstanding any  
11 other provision of law, the costs of enforcing this section to the  
12 respective licensing boards or committees may be awarded against  
13 any licensee found to be in violation of any provision of this  
14 section. This shall not diminish the power of district attorneys,  
15 county counsels, or city attorneys pursuant to existing law to seek  
16 appropriate relief.

17 (l) A physician and surgeon or doctor of podiatric medicine  
18 licensed pursuant to Chapter 5 (commencing with Section 2000)  
19 by the Medical Board of California who knowingly and  
20 intentionally violates this section may be cited and assessed an  
21 administrative fine not to exceed ten thousand dollars (\$10,000)  
22 per event. Section 125.9 shall govern the issuance of this citation  
23 and fine except that the fine limitations prescribed in paragraph  
24 (3) of subdivision (b) of Section 125.9 shall not apply to a fine  
25 under this subdivision.

26 SEC. 2. Section 680 of the Business and Professions Code is  
27 amended to read:

28 680. (a) Except as otherwise provided in this section, a health  
29 care practitioner shall disclose, while working, his or her name  
30 and practitioner's license status, as granted by this state, on a name  
31 tag in at least 18-point type. ~~A health care practitioner in a practice~~  
32 ~~or an office, whose license is prominently displayed, may opt to~~  
33 ~~not wear a name tag unless the health care practitioner is working~~  
34 ~~in a clinic accredited pursuant to Chapter 1.3 (commencing with~~  
35 ~~Section 1248) of Division 2 of the Health and Safety Code. If a~~  
36 ~~type or verbally. If a~~ health care practitioner or a licensed clinical  
37 social worker is working in a psychiatric setting or in a setting that  
38 is not licensed by the state, the employing entity or agency shall  
39 have the discretion to make an exception from the name tag  
40 requirement for individual safety or therapeutic concerns. In the

1 interest of public safety and consumer awareness, it shall be  
2 unlawful for any person to use the title “nurse” in reference to  
3 himself or herself and in any capacity, except for an individual  
4 who is a registered nurse or a licensed vocational nurse, or as  
5 otherwise provided in Section 2800. Nothing in this section shall  
6 prohibit a certified nurse assistant from using his or her title.

7 (b) Facilities licensed by the State Department of Social  
8 Services, the State Department of Mental Health, or the State  
9 Department of Public Health shall develop and implement policies  
10 to ensure that health care practitioners providing care in those  
11 facilities are in compliance with subdivision (a). The State  
12 Department of Social Services, the State Department of Mental  
13 Health, and the State Department of Public Health shall verify  
14 through periodic inspections that the policies required pursuant to  
15 subdivision (a) have been developed and implemented by the  
16 respective licensed facilities.

17 (c) For purposes of this article, “health care practitioner” means  
18 any person who engages in acts that are the subject of licensure  
19 or regulation under this division or under any initiative act referred  
20 to in this division.

21 SEC. 3. Section 2023.5 of the Business and Professions Code  
22 is amended to read:

23 2023.5. (a) The board, in conjunction with the Board of  
24 Registered Nursing, and in consultation with the Physician  
25 Assistant Committee and professionals in the field, shall review  
26 issues and problems surrounding the use of laser or intense light  
27 pulse devices for elective cosmetic procedures by physicians and  
28 surgeons, nurses, and physician assistants. The review shall include,  
29 but need not be limited to, all of the following:

30 (1) The appropriate level of physician supervision needed.

31 (2) The appropriate level of training to ensure competency.

32 (3) Guidelines for standardized procedures and protocols that  
33 address, at a minimum, all of the following:

34 (A) Patient selection.

35 (B) Patient education, instruction, and informed consent.

36 (C) Use of topical agents.

37 (D) Procedures to be followed in the event of complications or  
38 side effects from the treatment.

39 (E) Procedures governing emergency and urgent care situations.

(b) On or before January 1, 2009, the board and the Board of Registered Nursing shall promulgate regulations to implement changes determined to be necessary with regard to the use of laser or intense pulse light devices for elective cosmetic procedures by physicians and surgeons, nurses, and physician assistants.

(c) On or before July 1, 2009, the board shall adopt regulations regarding the appropriate level of physician supervision availability needed within clinics or other settings using laser or intense pulse light devices for elective cosmetic procedures.

(d) The board shall establish, as one of its priorities, the investigation of unlicensed activity or corporate practice of medicine violations in clinics or other settings using laser or intense pulse light devices.

SEC. 4. Section 2027.5 is added to the Business and Professions Code, to read:

2027.5. The board shall post on its *Internet* Web site an easy to understand factsheet to educate the public about cosmetic surgery and procedures, including their risks. Included with the factsheet shall be a comprehensive list of questions for patients to ask their physician and surgeon regarding cosmetic surgery.

SEC. 5. Section 1248.15 of the Health and Safety Code is amended to read:

1248.15. (a) The division shall adopt standards for accreditation and, in approving accreditation agencies to perform accreditation of outpatient settings, shall ensure that the certification program shall, at a minimum, include standards for the following aspects of the settings' operations:

(1) Outpatient setting allied health staff shall be licensed or certified to the extent required by state or federal law.

(2) (A) Outpatient settings shall have a system for facility safety and emergency training requirements.

(B) There shall be onsite equipment, medication, and trained personnel to facilitate handling of services sought or provided and to facilitate handling of any medical emergency that may arise in connection with services sought or provided.

(C) In order for procedures to be performed in an outpatient setting as defined in Section 1248, the outpatient setting shall do one of the following:

1 (i) Have a written transfer agreement with a local accredited or  
2 licensed acute care hospital, approved by the facility's medical  
3 staff.

4 (ii) Permit surgery only by a licensee who has admitting  
5 privileges at a local accredited or licensed acute care hospital, with  
6 the exception that licensees who may be precluded from having  
7 admitting privileges by their professional classification or other  
8 administrative limitations; shall have a written transfer agreement  
9 with licensees who have admitting privileges at local accredited  
10 or licensed acute care hospitals.

11 (D) Submission for approval by an accrediting agency of a  
12 detailed procedural plan for handling medical emergencies that  
13 shall be reviewed at the time of accreditation. No reasonable plan  
14 shall be disapproved by the accrediting agency.

15 (E) Submission for approval by an accrediting agency at the  
16 time of accreditation of a detailed plan, standardized procedures,  
17 and protocols to be followed in the event of serious complications  
18 or side effects from surgery that would place a patient at high risk  
19 for injury or harm and to govern emergency and urgent care  
20 situations.

21 (F) All physicians and surgeons transferring patients from an  
22 outpatient setting shall agree to cooperate with the medical staff  
23 peer review process on the transferred case, the results of which  
24 shall be referred back to the outpatient setting, if deemed  
25 appropriate by the medical staff peer review committee. If the  
26 medical staff of the acute care facility determines that inappropriate  
27 care was delivered at the outpatient setting, the acute care facility's  
28 peer review outcome shall be reported, as appropriate, to the  
29 accrediting body, the Health Care Financing Administration, the  
30 State Department of ~~Health Services~~ *Public Health*, and the  
31 appropriate licensing authority.

32 (3) The outpatient setting shall permit surgery by a dentist acting  
33 within his or her scope of practice under Chapter 4 (commencing  
34 with Section 1600) of Division 2 of the Business and Professions  
35 Code or physician and surgeon, osteopathic physician and surgeon,  
36 or podiatrist acting within his or her scope of practice under  
37 Chapter 5 (commencing with Section 2000) of Division 2 of the  
38 Business and Professions Code or the Osteopathic Initiative Act.  
39 The outpatient setting may, in its discretion, permit anesthesia  
40 service by a certified registered nurse anesthetist acting within his



1 or her scope of practice under Article 7 (commencing with Section  
2 2825) of Chapter 6 of Division 2 of the Business and Professions  
3 Code.

4 (4) Outpatient settings shall have a system for maintaining  
5 clinical records.

6 (5) Outpatient settings shall have a system for patient care and  
7 monitoring procedures.

8 (6) (A) Outpatient settings shall have a system for quality  
9 assessment and improvement.

10 (B) Members of the medical staff and other practitioners who  
11 are granted clinical privileges shall be professionally qualified and  
12 appropriately credentialed for the performance of privileges  
13 granted. The outpatient setting shall grant privileges in accordance  
14 with recommendations from qualified health professionals, and  
15 credentialing standards established by the outpatient setting.

16 (C) Clinical privileges shall be periodically reappraised by the  
17 outpatient setting. The scope of procedures performed in the  
18 outpatient setting shall be periodically reviewed and amended as  
19 appropriate.

20 (7) Outpatient settings regulated by this chapter that have  
21 multiple service locations governed by the same standards may  
22 elect to have all service sites surveyed on any accreditation survey.  
23 Organizations that do not elect to have all sites surveyed shall have  
24 a sample, not to exceed 20 percent of all service sites, surveyed.  
25 The actual sample size shall be determined by the division. The  
26 accreditation agency shall determine the location of the sites to be  
27 surveyed. Outpatient settings that have five or fewer sites shall  
28 have at least one site surveyed. When an organization that elects  
29 to have a sample of sites surveyed is approved for accreditation,  
30 all of the organizations' sites shall be automatically accredited.

31 (8) Outpatient settings shall post the certificate of accreditation  
32 in a location readily visible to patients and staff.

33 (9) Outpatient settings shall post the name and telephone number  
34 of the accrediting agency with instructions on the submission of  
35 complaints in a location readily visible to patients and staff.

36 (10) Outpatient settings shall have a written discharge criteria.

37 (b) Outpatient settings shall have a minimum of two staff  
38 persons on the premises, one of whom shall either be a licensed  
39 physician and surgeon or a licensed health care professional with  
40 current certification in advanced cardiac life support (ACLS), as

1 long as a patient is present who has not been discharged from  
2 supervised care. Transfer to an unlicensed setting of a patient who  
3 does not meet the discharge criteria adopted pursuant to paragraph  
4 (10) of subdivision (a) shall constitute unprofessional conduct.

5 (c) An accreditation agency may include additional standards  
6 in its determination to accredit outpatient settings if these are  
7 approved by the division to protect the public health and safety.

8 (d) No accreditation standard adopted or approved by the  
9 division, and no standard included in any certification program of  
10 any accreditation agency approved by the division, shall serve to  
11 limit the ability of any allied health care practitioner to provide  
12 services within his or her full scope of practice. Notwithstanding  
13 this or any other provision of law, each outpatient setting may limit  
14 the privileges, or determine the privileges, within the appropriate  
15 scope of practice, that will be afforded to physicians and allied  
16 health care practitioners who practice at the facility, in accordance  
17 with credentialing standards established by the outpatient setting  
18 in compliance with this chapter. Privileges may not be arbitrarily  
19 restricted based on category of licensure.

20 SEC. 6. Section 1248.2 of the Health and Safety Code is  
21 amended to read:

22 1248.2. (a) Any outpatient setting may apply to an  
23 accreditation agency for a certificate of accreditation. Accreditation  
24 shall be issued by the accreditation agency solely on the basis of  
25 compliance with its standards as approved by the division under  
26 this chapter.

27 (b) The division shall obtain and maintain a list of all accredited,  
28 certified, and licensed outpatient settings from the information  
29 provided by the accreditation, certification, and licensing agencies  
30 approved by the division, and shall notify the public whether a  
31 setting is accredited, certified, or licensed, or the setting's  
32 accreditation, certification, or license has been revoked, suspended,  
33 or placed on probation, or the setting has received a reprimand by  
34 the accreditation agency.

35 SEC. 7. Section 1248.25 of the Health and Safety Code is  
36 amended to read:

37 1248.25. If an outpatient setting does not meet the standards  
38 approved by the division, accreditation shall be denied by the  
39 accreditation agency, which shall provide the outpatient setting  
40 notification of the reasons for the denial. An outpatient setting may

1 reapply for accreditation at any time after receiving notification  
2 of the denial. The accrediting agency shall immediately report to  
3 the division if the outpatient setting's certificate for accreditation  
4 has been denied.

5 SEC. 8. Section 1248.35 of the Health and Safety Code is  
6 amended to read:

7 1248.35. (a) Every outpatient setting which is accredited shall  
8 be periodically inspected by the Division of Medical Quality or  
9 the accreditation agency. The frequency of inspections shall depend  
10 upon the type and complexity of the outpatient setting to be  
11 inspected. Inspections shall be conducted no less often than once  
12 every three years and as often as necessary to ensure the quality  
13 of care provided. The Division of Medical Quality or the  
14 accreditation agency may enter and inspect any outpatient setting  
15 that is accredited by an accreditation agency at any reasonable  
16 time to ensure compliance with, or investigate an alleged violation  
17 of, any standard of the accreditation agency or any provision of  
18 this chapter.

19 (b) If an accreditation agency determines, as a result of its  
20 inspection, that an outpatient setting is not in compliance with the  
21 standards under which it was approved, the accreditation agency  
22 may do any of the following:

23 (1) Issue a reprimand.

24 (2) Place the outpatient setting on probation, during which time  
25 the setting shall successfully institute and complete a plan of  
26 correction, approved by the division or the accreditation agency,  
27 to correct the deficiencies.

28 (3) Suspend or revoke the outpatient setting's certification of  
29 accreditation.

30 (c) Except as is otherwise provided in this subdivision, before  
31 suspending or revoking a certificate of accreditation under this  
32 chapter, the accreditation agency shall provide the outpatient setting  
33 with notice of any deficiencies and the outpatient setting shall  
34 agree with the accreditation agency on a plan of correction that  
35 shall give the outpatient setting reasonable time to supply  
36 information demonstrating compliance with the standards of the  
37 accreditation agency in compliance with this chapter, as well as  
38 the opportunity for a hearing on the matter upon the request of the  
39 outpatient center. During that allotted time, a list of deficiencies  
40 and the plan of correction shall be conspicuously posted in a clinic

1 location accessible to public view. The accreditation agency may  
2 immediately suspend the certificate of accreditation before  
3 providing notice and an opportunity to be heard, but only when  
4 failure to take the action may result in imminent danger to the  
5 health of an individual. In such cases, the accreditation agency  
6 shall provide subsequent notice and an opportunity to be heard.

7 (d) If the division determines that deficiencies found during an  
8 inspection suggests that the accreditation agency does not comply  
9 with the standards approved by the division, the division may  
10 conduct inspections, as described in this section, of other settings  
11 accredited by the accreditation agency to determine if the agency  
12 is accrediting settings in accordance with Section 1248.15.

13 (e) Reports on the results of each inspection shall be kept on  
14 file with the division or the accrediting agency along with the plan  
15 of correction and the outpatient setting comments. The inspection  
16 report may include a recommendation for reinspection. All  
17 inspection reports, lists of deficiencies, and plans of correction  
18 shall be public records open to public inspection.

19 (f) The accrediting agency shall immediately report to the  
20 division if the outgoing patient setting has been issued a reprimand  
21 or if the outpatient setting's certification of accreditation has been  
22 suspended or revoked or if the outpatient setting has been placed  
23 on probation.

24 SEC. 9. Section 1248.5 of the Health and Safety Code is  
25 amended to read:

26 1248.5. The division shall evaluate the performance of an  
27 approved accreditation agency no less than every three years, or  
28 in response to complaints against an agency, or complaints against  
29 one or more outpatient settings accreditation by an agency that  
30 indicates noncompliance by the agency with the standards approved  
31 by the division.

32 SEC. 10. No reimbursement is required by this act pursuant to  
33 Section 6 of Article XIII B of the California Constitution because  
34 the only costs that may be incurred by a local agency or school  
35 district will be incurred because this act creates a new crime or  
36 infraction, eliminates a crime or infraction, or changes the penalty  
37 for a crime or infraction, within the meaning of Section 17556 of  
38 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California  
2 Constitution.

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MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** SB 1526  
**Author:** Perata  
**Bill Date:** June 11, 2008, amended  
**Subject:** Polysomnographic Technologists  
**Sponsor:** Author

**STATUS OF BILL:**

This bill is currently in the Assembly Appropriations Committee.

**DESCRIPTION OF CURRENT LEGISLATION:**

This bill requires the Medical Board (Board) to adopt regulations by July 1, 2010, to establish qualifications for certified polysomnographic technologists. This bill authorizes persons who meet the specified education, examination, and certifications requirements to use the title “certified polysomnographic technologist” and engage in the practice of polysomnography under the supervision and direction of a licensed physician.

**ANALYSIS:**

This bill is sponsored by the American Academy of Sleep Medicine for the purpose of establishing criteria for individuals assisting licensed physicians in the practice of sleep medicine. Respiratory Care Board (RCB) feels that polysomnography is the unlicensed practice of respiratory care and has threatened to issue fines against those involved in the practice of sleep medicine. This has caused significant concern and uncertainty among the trained medical professionals practicing sleep medicine and has threatened the availability of these important medical services. This bill places no limitations on other health care practitioners acting within their own scope of practice.

SB 1526 does not establish a licensing practice act, it is a registration program. It is a proposal to require those who engage in the practice of polysomnography or use the title “certified polysomnographic technologist” to meet certain education, examination, and certification requirements, work under the supervision and direction of a physician, and undergo a criminal record clearance.

The Board would be required to adopt regulations regarding the qualifications for polysomnographic technologists and approve the entity that credentials practitioners, approve educational programs, and approve the certifying examination.

This bill has been amended to require certified polysomnographic technologists to register with the Board. Upon passing a national certifying exam approved by the Board, the applicant for registration must submit fingerprint cards or a completed Live Scan form in order to become registered as a certified polysomnographic technologist.

The author does not want to impose a burdensome program on the Medical Board and has included the ability for the Board to set a registration fee to support the work required to implement and maintain the program.

**FISCAL:**

First year cost of \$110,000, ongoing cost per year of \$59,000.  
Revenue is expected to offset costs, making the program  
revenue/cost neutral.

**POSITION:**

Neutral while bill is in development. Assign a board member to  
work with staff and interested parties in the development of this final  
bill.

Recommendation: Neutral

July 17, 2008

AMENDED IN ASSEMBLY JUNE 11, 2008

AMENDED IN SENATE APRIL 29, 2008

AMENDED IN SENATE APRIL 16, 2008

AMENDED IN SENATE MARCH 28, 2008

**SENATE BILL**

**No. 1526**

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**Introduced by Senator Perata  
(Coauthor: Senator Denham)**

February 22, 2008

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An act to add Chapter 7.8 (commencing with Section 3575) to Division 2 of the Business and Professions Code, relating to healing arts, *and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1526, as amended, Perata. Polysomnographic technologists: sleep and wake disorders.

Existing law, the Physician Assistant Practice Act, provides for the licensure and regulation of physician assistants by the Physician Assistant Committee of the Medical Board of California. Existing law prescribes the medical services that may be performed by a physician assistant under the supervision of a licensed physician and surgeon.

Existing law, the Respiratory Care Practice Act, provides for the licensure and regulation of respiratory professionals by the Respiratory Care Board of California. Existing law defines the practice of respiratory therapy, and prohibits its practice without a license issued by the board, subject to certain exceptions.

This bill would require the Medical Board of California to adopt regulations by January 1, 2010, to establish qualifications *and registration procedures* for certified polysomnographic technologists,



including requiring those technologists to be credentialed by a board-approved national accrediting agency, to have graduated from a board-approved educational program, and to have passed a board-approved national certifying examination, *with a specified exception for that examination requirement until January 1, 2012*. The bill would require a certified polysomnographic technologist to be *registered with the board, to be supervised by a licensed physician and surgeon, and to undergo criminal record clearance by the Department of Justice submit his or her fingerprints, as specified*. The bill would define polysomnography to mean the treatment, management, diagnostic testing, ~~research~~, control, education, and care of patients with sleep and wake disorders, as specified. The bill would further require the board to adopt regulations related to the employment of polysomnographic technicians and trainees.

*This bill would require polysomnographic technologists to register with the Medical Board of California for a fee to be fixed by the board at no more than \$100, and biennially at no more than \$50. The bill would require the deposit of those fees in the Contingent Fund of the Medical Board of California for purposes of the act, thereby making an appropriation. The bill would further set forth disciplinary standards and procedures, as specified.*

Vote: majority. Appropriation: ~~no~~ yes. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Chapter 7.8 (commencing with Section 3575) is  
2 added to Division 2 of the Business and Professions Code, to read:

3  
4 CHAPTER 7.8. POLYSOMNOGRAPHIC TECHNOLOGISTS

5  
6 3575. (a) As used in this ~~section~~ chapter, “board” means the  
7 Medical Board of California.

8 (b) The board shall promulgate regulations by January 1, 2010,  
9 relative to the qualifications for designation of an individual as a  
10 certified polysomnographic technologist. Those qualifications shall  
11 include all of the following:

12 (1) He or she shall have valid, current credentials as a  
13 polysomnographic technologist by a national accrediting agency  
14 approved by the board.

1 (2) He or she shall have graduated from a polysomnographic  
2 educational program that has been approved by the board.

3 (3) He or she shall have passed a national certifying examination  
4 that has been approved by the board, *or in the alternative, may*  
5 *submit proof to the board that he or she has been practicing*  
6 *polysomnography for at least five years in a manner that is*  
7 *acceptable to the board. However, by January 1, 2012, all*  
8 *individuals seeking to obtain new certification as a*  
9 *polysomnographic technologist shall have passed the national*  
10 *certifying examination.*

11 (c) Notwithstanding any other provision of law, an individual  
12 may use the title “certified polysomnographic technologist” and  
13 may engage in the practice of polysomnography only under the  
14 following circumstances:

15 (1) *He or she has registered with the board.*

16 (2) He or she works under the supervision and direction of a  
17 licensed physician and surgeon.

18 ~~(2) He or she has submitted electronic fingerprint images and~~  
19 ~~related information to the Department of Justice for a criminal~~  
20 ~~record clearance. The results of that criminal record clearance shall~~  
21 ~~be provided to the facility employing the polysomnographic~~  
22 ~~technologist.~~

23 ~~(3)–~~

24 (3) *He or she submits fingerprint cards or a copy of a completed*  
25 *Live Scan form in order to establish the identity of the applicant*  
26 *and in order to determine whether the applicant has a record of*  
27 *any criminal convictions in this state or in any other jurisdiction,*  
28 *including foreign countries. The information obtained as a result*  
29 *of the fingerprinting of the applicant shall be used in accordance*  
30 *with Section 11105 of the Penal Code and to determine whether*  
31 *the applicant is subject to denial of registration under the*  
32 *provisions of Division 1.5 (commencing with Section 475).*

33 (4) He or she meets the requirements of this ~~section~~ chapter.

34 (d) “Polysomnography” means the treatment, management,  
35 diagnostic testing, ~~research~~, control, education, and care of patients  
36 with sleep and wake disorders. Polysomnography shall include,  
37 but not be limited to, the process of analysis, monitoring, and  
38 recording of physiologic data during sleep and wakefulness to  
39 assist in the treatment ~~and research~~ of disorders, syndromes, and  
40 dysfunctions that are sleep-related, manifest during sleep, or disrupt

1 normal sleep and wake cycles and activities. Polysomnography  
2 shall also include, but not be limited to, the therapeutic and  
3 diagnostic use of oxygen, the use of positive airway pressure  
4 including continuous positive airway pressure (CPAP) and bilevel  
5 modalities, *adaptive servo-ventilation*, and maintenance of nasal  
6 and oral airways that do not extend into the trachea.

7 (e) The board shall adopt regulations by January 1, 2010, that  
8 establish the means and circumstances in which a licensed  
9 physician and surgeon may employ polysomnographic technicians  
10 and polysomnographic trainees.

11 (f) As used in this ~~section~~ *chapter*, “supervision” means that  
12 the supervising physician and surgeon shall remain available, either  
13 in person or through telephonic or electronic means, at the time  
14 that the polysomnographic services are provided.

15 (g) This ~~section~~ *chapter* shall not apply to the following:

16 ~~(1) Allied health professionals providing in-home diagnostic~~  
17 ~~testing and the set up, education, and training of patients requiring~~  
18 ~~positive airway pressure treatment to maintain their upper airways.~~

19 ~~(2) Respiratory care practitioners working within the scope of~~  
20 ~~practice of their license. California licensed allied health~~  
21 ~~professionals working within the scope of practice of their license.~~

22 3576. (a) A registration may be denied, suspended, revoked,  
23 or otherwise subjected to discipline for any of the following:

24 (1) Incompetence, gross negligence, or repeated similar  
25 negligent acts performed by the registrant.

26 (2) An act of dishonesty or fraud.

27 (3) Committing any act or being convicted of a crime  
28 constituting grounds for denial of licensure or registration under  
29 Section 480.

30 (b) The proceedings shall be conducted in accordance with  
31 Chapter 5 (commencing with Section 11500) of Part 1 of Division  
32 3 of Title 2 of the Government Code, and the board shall have all  
33 powers granted therein.

34 3577. (a) Each person to whom registration is granted under  
35 the provisions of this chapter shall pay into the Contingent Fund  
36 of the Medical Board of California a fee to be fixed by the board  
37 at a sum not in excess of one hundred dollars (\$100).

38 (b) The registration shall expire after two years. The registration  
39 may be renewed biennially at a fee to be fixed by the board at a  
40 sum not in excess of fifty dollars (\$50).

1     (c) *The money in the Contingent Fund of the Medical Board of*  
2     *California that is collected pursuant to this section shall be used*  
3     *for the administration of this chapter.*

4     3578. *Notwithstanding any other provision of law, nothing in*  
5     *this chapter shall prohibit a clinic or health facility licensed*  
6     *pursuant to Division 2 (commencing with Section 1200) of the*  
7     *Health and Safety Code from employing a polysomnography*  
8     *technologist.*

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MEDICAL BOARD OF CALIFORNIA  
LEGISLATIVE ANALYSIS

**Bill Number:** SB 1779  
**Author:** Senate Business and Professions Committee  
**Bill Date:** June 12, 2008, amended  
**Subject:** Healing Arts: Omnibus  
**Sponsor:** Author/Various Boards

**STATUS OF BILL:**

This bill is currently in the Assembly Appropriations Committee.

**DESCRIPTION OF CURRENT LEGISLATION:**

This bill is the vehicle by which omnibus legislation will be carried by the Senate Business and Professions Committee. Some provisions, although non-substantive, impact statutes governing the Medical Practices Act.

**ANALYSIS:**

This bill is proposing non-substantive and non-controversial changes to law. The provisions relating to the Medical Board are in the Business and Professions Code and are as follows:

- 2089.5 – Specify type of residency programs; and technical changes.
- 2096 – Specify type of residency programs; and technical changes.
- 2102 – Federation of State Medical Boards (FSMB) will not test anyone without a state license; and technical changes.
- 2107 – Technical changes.
- 2135 –
  - *Subdivision (a)(1)* – Specifying degree of Medical Doctor to clarify and ensure understanding.
  - *Subdivision (d)* – Maintaining consistency among all licensing pathways.
  - Technical changes.
- 2168.4 – Making the renewal requirements for the special faculty permit the same as those for the physician's certificate renewal.

- 2172 – Repeal; board no longer administers examinations.
- 2173 – Repeal; board no longer administers examinations.
- 2174 – Repeal; board no longer administers examinations.
- 2175 – Repeal; board no longer administers examinations.
- 2307 – Specify that recommendations can come from physicians licensed in any state; and technical changes.
- 2335 – Re-amending section from AB 253 (2007), the Board’s restructuring bill, due to subsequent section amendments in a bill that was signed afterward. This section was included in a bill that was signed after ours, which did not include the amendments we were requesting.

Additional amendments to this bill are planned to include Business and Professions Code sections 801.01 and 2221. Section 801.01 is to be amended to make clear whether or not malpractice actions have to be in California to be reported. Section 2221 is being amended to make the process by which an applicant’s probationary certificate can be modified or terminated consistent with the process that a probationary certificate is modified or terminated through enforcement.

**FISCAL:**                      None

**POSITION:**                      Support the technical provisions regarding the Medical Board.

June 16, 2008

AMENDED IN ASSEMBLY JUNE 12, 2008

AMENDED IN ASSEMBLY JUNE 5, 2008

AMENDED IN SENATE MAY 5, 2008

AMENDED IN SENATE APRIL 16, 2008

**SENATE BILL**

**No. 1779**

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**Introduced by Committee on Business, Professions and Economic Development (Senators Ridley-Thomas (Chair), Aanestad, Calderon, Corbett, Denham, Florez, Harman, Simitian, and Yee)**

March 13, 2008

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An act to amend Sections 128.5, 149, 683, 733, 800, 801, 803, 2089.5, 2096, 2102, 2107, 2135, 2168.4, 2175, 2307, 2335, 2486, 2488, 2570.5, 2570.7, 2570.6, 2760.1, 3503, 3517, 3518, 3625, 3633.1, 3635, 3636, 3685, 3750.5, 3753.5, 3773, 4022.5, 4027, 4040, 4051, 4059.5, 4060, 4062, 4076, 4081, 4110, 4111, 4126.5, 4161, 4174, 4231, 4301, 4305, 4329, 4330, 4980.03, 4980.30, 4980.43, 4982, 4989.54, 4992.3, 4996.2, 4996.17, 4996.18, and 4996.23 of, to amend and renumber Section 2570.185 of, to add Sections 2169, 2570.36, 4036.5, 4980.04, and 4990.09 to, and to repeal Sections 2172, 2173, 2174, 4981, 4994.1, 4996.20, and 4996.21 of, the Business and Professions Code, to amend Section 8659 of the Government Code, and to amend Sections 11150 and 11165 of the Health and Safety Code, relating to healing arts, *and making an appropriation therefor*.

LEGISLATIVE COUNSEL'S DIGEST

SB 1779, as amended, Committee on Business, Professions and Economic Development. Healing arts.

(1) Under existing law, if, upon investigation, a specified state regulatory agency has probable cause to believe that a person is

advertising in a telephone directory with respect to the offering or performance of services, without being properly licensed by or registered with that agency, the agency is authorized to issue a specified citation.

This bill would add the Physical Therapy Board of California to those authorized agencies.

Existing law requires specified licensure boards to report to the State Department of Health Care Services the name and license number of a person whose license has been revoked, suspended, surrendered, made inactive, or otherwise restricted, and requires specified licensure boards to create and maintain a central file of the names of all persons who hold a license from the board, and to prescribe and promulgate written complaint forms, as specified.

This bill would also subject the California Board of Occupational Therapy to these requirements, and would subject the Acupuncture Board to the requirement to create and maintain a central file of the names of its licensees and to prescribe and promulgate written complaint forms, as specified.

(2) Existing law, the Medical Practice Act, provides for the licensure and regulation of physicians and surgeons by the Medical Board of California, in the Department of Consumer Affairs. The act requires each applicant for a physician and surgeon's license to meet specified training and examinations requirements, authorizes the appointment of examination commissioners, requires that examinations be conducted in English, except as specified, allows the examinations to be conducted in specified locations, requires notice of examinations to contain certain information, and requires examination records to be kept on file for a period of 2 years or more. The act authorizes a person whose certificate has been surrendered, revoked, suspended, or placed on probation, as specified, to petition for reinstatement of the certificate or modification of the penalty if specified requirements are met. *Under existing law, any person who meets certain eligibility requirements, including, but not limited to, the requirement that the person is academically eminent, as defined, may apply for a special faculty permit that authorizes the holder to practice medicine, without a physician's and surgeon's certificate, within the medical school itself and certain affiliated institutions.*

This bill would revise the training requirements for a physician and surgeon's license, and would delete the requirement of passage of a clinical competency examination that is applicable to certain applicants. The bill would delete the provisions related to the appointment of



examination commissioners, examinations being conducted in English and examination interpreters, the location of examinations, and examination notices. The bill would also delete the requirement that the board keep examination records on file for at least 2 years, and would instead require the board to keep state examination records on file until June 2069. The bill would revise the requirements for a petition for reinstatement or modification, as specified. *The bill would require the holder of a special faculty permit to meet the same continuing medical education requirements as the holder of a physician's and surgeon's certificate and would also require a special faculty permitholder to show that he or she meets these requirements at the time of permit renewal.*

Existing law provides for the licensure and regulation of podiatrists by the Board of Podiatric Medicine in the Medical Board of California. Existing law authorizes the Board of Podiatric Medicine to issue an order of nonadoption of a proposed decision or interim order of the Medical Quality Hearing Panel within 90 calendar days. Existing law requires an applicant for a certificate to practice podiatric medicine to meet specified application procedures.

This bill would instead authorize the Board of Podiatric Medicine to issue an order of nonadoption of a proposed decision or interim order of the Medical Quality Hearing Panel within 100 calendar days. The bill would revise the application procedures for a certificate to practice podiatric medicine, as specified.

(3) Existing law, the Occupational Therapy Practice Act, provides for the licensure of occupational therapists and the certification of occupational therapy assistants by the California Board of Occupational Therapy. Existing law requires an occupational therapist to document his or her evaluation, goals, treatment plan, and summary of treatment in a patient record. Existing law authorizes a limited permit to practice occupational therapy to be granted if specified education and examination requirements are met, but provides that if the person fails to qualify for or pass the first announced licensure examination, all limited permit privileges automatically cease upon due notice. Existing law requires an applicant applying for a license or certification to file with the board a written application provided by and satisfactory to the board, showing that he or she meets certain requirements, including, but not limited to, successful completion of an educational program's academic requirements approved by the board and accredited by the American Occupational Therapy Association's Accreditation Council

for Occupational Therapy Education (ACOTE) and successful completion of a period of supervised fieldwork experience. Existing law also specifies the curriculum requirements for an education program for occupational therapists and occupational therapy assistants.

This bill would require an occupational therapy assistant to document in a patient record the services provided to the patient, and would require an occupational therapist or assistant to document and sign a patient record legibly. The bill would revise the provisions related to limited permit privileges to instead provide that a person's failure to pass the licensure examination during the initial eligibility period would cause the privileges to automatically cease upon due notice. The bill would require that the applicant successfully complete the educational program's academic requirements approved by the board and accredited by ACOTE, or accredited or approved by the American Occupational Therapy Association's predecessor organization, or approved by AOTA's Career Mobility Program. The bill would also revise those curriculum requirements for an educational program. The bill would authorize an applicant who is a graduate of an educational program and is unable to provide evidence of having met the curriculum requirements to demonstrate passage of a specified examination as evidence of having successfully satisfied the curriculum requirements. The bill would require an applicant who completed AOTA's Career Mobility Program to demonstrate participation in the program and passage of a specified examination as evidence of having successfully satisfied the educational program and curriculum requirements. The bill would revise the supervised fieldwork experience requirement. The bill would require a licensee to report to the board violations of the Occupational Therapy Practice Act by licensees or applicants for licensure and to cooperate with the board, as specified.

(4) Existing law, the Nursing Practice Act, provides for the licensure and regulation of nurses by the Board of Registered Nursing in the Department of Consumer Affairs. Existing law authorizes a registered nurse whose license is revoked or suspended, or who is placed on probation, to petition for reinstatement of his or her license or modification of the penalty after a specified time period.

This bill would require a petition by a registered nurse whose initial license application is subject to a disciplinary decision to be filed after a specified time period from the date upon which his or her initial license was issued.

(5) Existing law, the Physician Assistant Practice Act, provides for the licensure and regulation of physician's assistants by the Physician Assistant Committee of the Medical Board of California. Existing law authorizes the committee to grant interim approval to an applicant for licensure as a physician assistant.

This bill would delete that authority to grant interim approval and would make conforming changes.

(6) Existing law, the Naturopathic Doctors Act, provides for the licensure and regulation of naturopathic doctors by the Bureau of Naturopathic Medicine in the Department of Consumer Affairs. Existing law authorizes the bureau to grant a license to a person meeting certain requirements who has graduated from training prior to 1986 if the application is received prior to 2008, and requires licensees to obtain continuing education through specified continuing education courses. Existing law requires a licensee on inactive status to meet certain requirements in order to restore his or her license to active status, including paying a reactivation fee.

This bill would require an application for licensure by a person who graduated from training prior to 1986 to be received by the bureau prior to 2011, and would revise the standards for continuing education courses. The bill would delete the requirement that a licensee on inactive status pay a reactivation fee in order to restore his or her license to active status, and would instead require him or her to be current with all licensing fees.

Existing law authorizes the Director of Consumer Affairs to establish an advisory council related to naturopathic doctors composed of members who receive no compensation, travel allowances, or reimbursement of expenses.

This bill would delete the requirement that the members of the advisory council receive no compensation, travel allowances, or reimbursement of expenses.

(7) Existing law provides for the licensure and regulation of respiratory care practitioners by the Respiratory Care Board of California. Existing law authorizes the board to deny, suspend, or revoke a license to practice respiratory therapy if the licensee obtains or possesses in violation of the law, except as directed by a licensed physician and surgeon, dentist, or podiatrist, or furnishes or administers or uses a controlled substance or dangerous drug, as defined. Existing law authorizes the board to direct a practitioner or applicant who is found to have violated the law to pay the costs of investigation and

prosecution. Existing law requires an applicant for renewal of a respiratory care practitioner license to notify the board of specified information.

This bill would revise the board's authority to deny, suspend, or revoke a license to practice respiratory therapy for obtaining, possessing, using, administering, or furnishing controlled substances or dangerous drugs, and would also authorize the board to deny, suspend, or revoke a license if a licensee uses any controlled substance, dangerous drug, or alcoholic beverage to an extent or manner dangerous or injurious to himself or herself, the public, or another person, or to the extent that it impairs his or her ability to practice safely. The bill would also authorize the board to direct a practitioner or applicant who is found to have violated a term or condition of board probation to pay the costs for investigation and prosecution. The bill would require an applicant for renewal of a respiratory care practitioner license to cooperate in furnishing additional information to the board, as requested, and would provide that, if a licensee fails to furnish the information within 30 days of a request, his or her license would become inactive until the information is received.

Existing law exempts certain healing arts practitioners from liability for specified services rendered during a state of war, state of emergency, or local emergency.

This bill would also exempt respiratory care practitioners from liability for the provision of specified services rendered during a state of war, state of emergency, or local emergency.

(8) Existing law, the Pharmacy Law, the knowing violation of which is a crime, provides for the licensure and regulation of pharmacists and pharmacies by the California State Board of Pharmacy in the Department of Consumer Affairs.

Existing law authorizes a pharmacy to furnish dangerous drugs only to specified persons or entities, and subjects certain pharmacies and persons who violate the provision to specified fines.

This bill would provide that any violation of this provision by any person or entity would subject the person to the fine.

*Existing law prohibits a person from acting as a wholesaler of any dangerous drug or device without a license from the board. Existing law requires a nonresident wholesaler, as defined, to be licensed prior to shipping, mailing, or delivering dangerous drugs or dangerous devices to a site located in this state.*

*This bill would modify that definition and would also require a nonresident wholesaler to be licensed prior to selling, brokering, or distributing dangerous drugs or devices within this state. By subjecting these nonresident wholesalers to these licensure requirements which include, among other things, payment of specified fees, the bill would increase that part of the revenue in the Pharmacy Board Contingent Fund that is continuously appropriated and would thereby make an appropriation.*

Existing law requires a pharmacy or pharmacist who is in charge of or manages a pharmacy to notify the board within 30 days of termination of employment of the pharmacist-in-charge or acting as manager, and provides that a violation of this provision is grounds for disciplinary action.

This bill would instead provide that failure by a pharmacist-in-charge or a pharmacy to notify the board in writing that the pharmacist-in-charge has ceased to act as pharmacist-in-charge within 30 days constitutes grounds for disciplinary action, and would also provide that the operation of the pharmacy for more than 30 days without the supervision or management by a pharmacist-in-charge constitutes grounds for disciplinary action. The bill would revise the definition of a designated representative or designated representative-in-charge, and would define a pharmacist-in-charge.

Existing law makes a nonpharmacist owner of a pharmacy who commits acts that would subvert or tend to subvert the efforts of a pharmacist-in-charge to comply with the Pharmacy Law guilty of a misdemeanor.

This bill would apply this provision to any pharmacy owner.

The bill would require the board, during a declared federal, state, or local emergency, to allow for the employment of a mobile pharmacy in impacted areas under specified conditions, and would authorize the board to allow the temporary use of a mobile pharmacy when a pharmacy is destroyed or damaged under specified conditions. The bill would authorize the board, if a pharmacy fails to provide documentation substantiating continuing education requirements as part of a board investigation or audit, to cancel an active pharmacy license and issue an inactive pharmacy license, and would allow a pharmacy to reobtain an active pharmacy license if it meets specified requirements.

Because this bill would impose new requirements and prohibitions under the Pharmacy Law, the knowing violation of which would be a crime, it would impose a state-mandated local program.

Existing law requires pharmacies to provide information regarding certain controlled substances prescriptions to the Department of Justice on a weekly basis.

This bill would also require a clinic to provide this information to the Department of Justice on a weekly basis.

(9) Existing law provides for the licensure and regulation of psychologists, clinical social workers, and marriage and family therapists by the Board of Behavioral Sciences. Existing law generally provides for a system of citations and fines that are applicable to healing arts licensees.

This bill would prohibit the board from publishing on the Internet final determinations of a citation and fine of \$1,500 or less for more than 5 years from the date of issuance of the citation.

Existing law authorizes the board to deny a license or registration or to suspend or revoke the license or registration of a licensee or registrant if he or she has been guilty of unprofessional conduct and existing law specifies that unprofessional conduct includes, but is not limited to, the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any specified substances or any combination thereof.

This bill would delete that provision specifying that unprofessional conduct includes the conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any specified substances or any combination thereof. The bill would specify that unprofessional conduct includes the failure to comply with telemedicine requirements as well as engaging in any conduct which subverts or attempts to subvert any licensing examination or the administration of an examination as specified.

Existing law requires applicants for a clinical social worker license to furnish evidence satisfactory to the board that he or she has, among other things, 2 year's of supervised postmaster's degree experience. Existing law requires this experience to meet various criteria including, but not limited to, at least 3,200 hours of postmaster's degree supervised experience providing clinical social work services, and of those hours, at least 1,700 hours gained under the supervision of a licensed clinical social worker, and the remaining hours under the supervision of a board-acceptable licensed mental health professional. Existing law also requires this experience to include at least one hour of direct supervisor contact, as defined, for a minimum of 104 weeks. Existing law provides

various alternative criteria sufficient to satisfy the experience requirement.

This bill would revise the definition of one hour of direct supervisor contact and would delete those various alternative criteria.

(10) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: ~~no~~ yes. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 128.5 of the Business and Professions  
2 Code is amended to read:

3 128.5. (a) Notwithstanding any other provision of law, if at  
4 the end of any fiscal year, an agency within the Department of  
5 Consumer Affairs, except the agencies referred to in subdivision  
6 (b), has unencumbered funds in an amount that equals or is more  
7 than the agency's operating budget for the next two fiscal years,  
8 the agency shall reduce license or other fees, whether the license  
9 or other fees be fixed by statute or may be determined by the  
10 agency within limits fixed by statute, during the following fiscal  
11 year in an amount that will reduce any surplus funds of the agency  
12 to an amount less than the agency's operating budget for the next  
13 two fiscal years.

14 (b) Notwithstanding any other provision of law, if at the end of  
15 any fiscal year, the California Architects Board, the Board of  
16 Behavioral Sciences, the Veterinary Medical Board, the Court  
17 Reporters Board of California, the Medical Board of California,  
18 the Board of Vocational Nursing and Psychiatric Technicians, or  
19 the Bureau of Security and Investigative Services has  
20 unencumbered funds in an amount that equals or is more than the  
21 agency's operating budget for the next two fiscal years, the agency  
22 shall reduce license or other fees, whether the license or other fees  
23 be fixed by statute or may be determined by the agency within  
24 limits fixed by statute, during the following fiscal year in an amount  
25 that will reduce any surplus funds of the agency to an amount less  
26 than the agency's operating budget for the next two fiscal years.

1 SEC. 2. Section 149 of the Business and Professions Code is  
2 amended to read:

3 149. (a) If, upon investigation, an agency designated in  
4 subdivision (e) has probable cause to believe that a person is  
5 advertising in a telephone directory with respect to the offering or  
6 performance of services, without being properly licensed by or  
7 registered with the agency to offer or perform those services, the  
8 agency may issue a citation under Section 148 containing an order  
9 of correction that requires the violator to do both of the following:

10 (1) Cease the unlawful advertising.

11 (2) Notify the telephone company furnishing services to the  
12 violator to disconnect the telephone service furnished to any  
13 telephone number contained in the unlawful advertising.

14 (b) This action is stayed if the person to whom a citation is  
15 issued under subdivision (a) notifies the agency in writing that he  
16 or she intends to contest the citation. The agency shall afford an  
17 opportunity for a hearing, as specified in Section 125.9.

18 (c) If the person to whom a citation and order of correction is  
19 issued under subdivision (a) fails to comply with the order of  
20 correction after that order is final, the agency shall inform the  
21 Public Utilities Commission of the violation and the Public Utilities  
22 Commission shall require the telephone corporation furnishing  
23 services to that person to disconnect the telephone service furnished  
24 to any telephone number contained in the unlawful advertising.

25 (d) The good faith compliance by a telephone corporation with  
26 an order of the Public Utilities Commission to terminate service  
27 issued pursuant to this section shall constitute a complete defense  
28 to any civil or criminal action brought against the telephone  
29 corporation arising from the termination of service.

30 (e) Subdivision (a) shall apply to the following boards, bureaus,  
31 committees, commissions, or programs:

32 (1) The Bureau of Barbering and Cosmetology.

33 (2) The Funeral Directors and Embalmers Program.

34 (3) The Veterinary Medical Board.

35 (4) The Hearing Aid Dispensers Advisory Commission.

36 (5) The Landscape Architects Technical Committee.

37 (6) The California Board of Podiatric Medicine.

38 (7) The Respiratory Care Board of California.

39 (8) The Bureau of Home Furnishings and Thermal Insulation.

40 (9) The Bureau of Security and Investigative Services.



- 1 (10) The Bureau of Electronic and Appliance Repair.
- 2 (11) The Bureau of Automotive Repair.
- 3 (12) The Tax Preparers Program.
- 4 (13) The California Architects Board.
- 5 (14) The Speech-Language Pathology and Audiology Board.
- 6 (15) The Board for Professional Engineers and Land Surveyors.
- 7 (16) The Board of Behavioral Sciences.
- 8 (17) The State Board for Geologists and Geophysicists.
- 9 (18) The Structural Pest Control Board.
- 10 (19) The Acupuncture Board.
- 11 (20) The Board of Psychology.
- 12 (21) The California Board of Accountancy.
- 13 (22) The Bureau of Naturopathic Medicine.
- 14 (23) The Physical Therapy Board of California.

15 SEC. 3. Section 683 of the Business and Professions Code is  
16 amended to read:

17 683. (a) A board shall report, within 10 working days, to the  
18 State Department of Health Care Services the name and license  
19 number of a person whose license has been revoked, suspended,  
20 surrendered, made inactive by the licensee, or placed in another  
21 category that prohibits the licensee from practicing his or her  
22 profession. The purpose of the reporting requirement is to prevent  
23 reimbursement by the state for Medi-Cal and Denti-Cal services  
24 provided after the cancellation of a provider's professional license.

25 (b) "Board," as used in this section, means the Dental Board of  
26 California, the Medical Board of California, the Board of  
27 Psychology, the State Board of Optometry, the California State  
28 Board of Pharmacy, the Osteopathic Medical Board of California,  
29 the State Board of Chiropractic Examiners, and the California  
30 Board of Occupational Therapy.

31 SEC. 4. Section 733 of the Business and Professions Code is  
32 amended to read:

33 733. (a) No licentiate shall obstruct a patient in obtaining a  
34 prescription drug or device that has been legally prescribed or  
35 ordered for that patient. A violation of this section constitutes  
36 unprofessional conduct by the licentiate and shall subject the  
37 licentiate to disciplinary or administrative action by his or her  
38 licensing agency.

39 (b) Notwithstanding any other provision of law, a licentiate  
40 shall dispense drugs and devices, as described in subdivision (a)

1 of Section 4024, pursuant to a lawful order or prescription unless  
2 one of the following circumstances exists:

3 (1) Based solely on the licentiate's professional training and  
4 judgment, dispensing pursuant to the order or the prescription is  
5 contrary to law, or the licentiate determines that the prescribed  
6 drug or device would cause a harmful drug interaction or would  
7 otherwise adversely affect the patient's medical condition.

8 (2) The prescription drug or device is not in stock. If an order,  
9 other than an order described in Section 4019, or prescription  
10 cannot be dispensed because the drug or device is not in stock, the  
11 licentiate shall take one of the following actions:

12 (A) Immediately notify the patient and arrange for the drug or  
13 device to be delivered to the site or directly to the patient in a  
14 timely manner.

15 (B) Promptly transfer the prescription to another pharmacy  
16 known to stock the prescription drug or device that is near enough  
17 to the site from which the prescription or order is transferred, to  
18 ensure the patient has timely access to the drug or device.

19 (C) Return the prescription to the patient and refer the patient.  
20 The licentiate shall make a reasonable effort to refer the patient to  
21 a pharmacy that stocks the prescription drug or device that is near  
22 enough to the referring site to ensure that the patient has timely  
23 access to the drug or device.

24 (3) The licentiate refuses on ethical, moral, or religious grounds  
25 to dispense a drug or device pursuant to an order or prescription.  
26 A licentiate may decline to dispense a prescription drug or device  
27 on this basis only if the licentiate has previously notified his or  
28 her employer, in writing, of the drug or class of drugs to which he  
29 or she objects, and the licentiate's employer can, without creating  
30 undue hardship, provide a reasonable accommodation of the  
31 licentiate's objection. The licentiate's employer shall establish  
32 protocols that ensure that the patient has timely access to the  
33 prescribed drug or device despite the licentiate's refusal to dispense  
34 the prescription or order. For purposes of this section, "reasonable  
35 accommodation" and "undue hardship" shall have the same  
36 meaning as applied to those terms pursuant to subdivision (I) of  
37 Section 12940 of the Government Code.

38 (c) For the purposes of this section, "prescription drug or device"  
39 has the same meaning as the definition in Section 4022.

1 (d) The provisions of this section shall apply to the drug therapy  
2 described in Section 4052.3.

3 (e) This section imposes no duty on a licentiate to dispense a  
4 drug or device pursuant to a prescription or order without payment  
5 for the drug or device, including payment directly by the patient  
6 or through a third-party payer accepted by the licentiate or payment  
7 of any required copayment by the patient.

8 (f) The notice to consumers required by Section 4122 shall  
9 include a statement that describes patients' rights relative to the  
10 requirements of this section.

11 SEC. 5. Section 800 of the Business and Professions Code is  
12 amended to read:

13 800. (a) The Medical Board of California, the Board of  
14 Psychology, the Dental Board of California, the Osteopathic  
15 Medical Board of California, the State Board of Chiropractic  
16 Examiners, the Board of Registered Nursing, the Board of  
17 Vocational Nursing and Psychiatric Technicians, the State Board  
18 of Optometry, the Veterinary Medical Board, the Board of  
19 Behavioral Sciences, the Physical Therapy Board of California,  
20 the California State Board of Pharmacy, the Speech-Language  
21 Pathology and Audiology Board, the California Board of  
22 Occupational Therapy, and the Acupuncture Board shall each  
23 separately create and maintain a central file of the names of all  
24 persons who hold a license, certificate, or similar authority from  
25 that board. Each central file shall be created and maintained to  
26 provide an individual historical record for each licensee with  
27 respect to the following information:

28 (1) Any conviction of a crime in this or any other state that  
29 constitutes unprofessional conduct pursuant to the reporting  
30 requirements of Section 803.

31 (2) Any judgment or settlement requiring the licensee or his or  
32 her insurer to pay any amount of damages in excess of three  
33 thousand dollars (\$3,000) for any claim that injury or death was  
34 proximately caused by the licensee's negligence, error or omission  
35 in practice, or by rendering unauthorized professional services,  
36 pursuant to the reporting requirements of Section 801 or 802.

37 (3) Any public complaints for which provision is made pursuant  
38 to subdivision (b).

39 (4) Disciplinary information reported pursuant to Section 805.

1 (b) Each board shall prescribe and promulgate forms on which  
2 members of the public and other licensees or certificate holders  
3 may file written complaints to the board alleging any act of  
4 misconduct in, or connected with, the performance of professional  
5 services by the licensee.

6 If a board, or division thereof, a committee, or a panel has failed  
7 to act upon a complaint or report within five years, or has found  
8 that the complaint or report is without merit, the central file shall  
9 be purged of information relating to the complaint or report.

10 Notwithstanding this subdivision, the Board of Psychology, the  
11 Board of Behavioral Sciences, and the Respiratory Care Board of  
12 California shall maintain complaints or reports as long as each  
13 board deems necessary.

14 (c) The contents of any central file that are not public records  
15 under any other provision of law shall be confidential except that  
16 the licensee involved, or his or her counsel or representative, shall  
17 have the right to inspect and have copies made of his or her  
18 complete file except for the provision that may disclose the identity  
19 of an information source. For the purposes of this section, a board  
20 may protect an information source by providing a copy of the  
21 material with only those deletions necessary to protect the identity  
22 of the source or by providing a comprehensive summary of the  
23 substance of the material. Whichever method is used, the board  
24 shall ensure that full disclosure is made to the subject of any  
25 personal information that could reasonably in any way reflect or  
26 convey anything detrimental, disparaging, or threatening to a  
27 licensee's reputation, rights, benefits, privileges, or qualifications,  
28 or be used by a board to make a determination that would affect  
29 a licensee's rights, benefits, privileges, or qualifications. The  
30 information required to be disclosed pursuant to Section 803.1  
31 shall not be considered among the contents of a central file for the  
32 purposes of this subdivision.

33 The licensee may, but is not required to, submit any additional  
34 exculpatory or explanatory statement or other information that the  
35 board shall include in the central file.

36 Each board may permit any law enforcement or regulatory  
37 agency when required for an investigation of unlawful activity or  
38 for licensing, certification, or regulatory purposes to inspect and  
39 have copies made of that licensee's file, unless the disclosure is  
40 otherwise prohibited by law.

1 These disclosures shall effect no change in the confidential status  
2 of these records.

3 SEC. 6. Section 801 of the Business and Professions Code is  
4 amended to read:

5 801. (a) Except as provided in Section 801.01 and subdivisions  
6 (b), (c), and (d) of this section, every insurer providing professional  
7 liability insurance to a person who holds a license, certificate, or  
8 similar authority from or under any agency mentioned in  
9 subdivision (a) of Section 800 shall send a complete report to that  
10 agency as to any settlement or arbitration award over three  
11 thousand dollars (\$3,000) of a claim or action for damages for  
12 death or personal injury caused by that person's negligence, error,  
13 or omission in practice, or by his or her rendering of unauthorized  
14 professional services. The report shall be sent within 30 days after  
15 the written settlement agreement has been reduced to writing and  
16 signed by all parties thereto or within 30 days after service of the  
17 arbitration award on the parties.

18 (b) Every insurer providing professional liability insurance to  
19 a person licensed pursuant to Chapter 13 (commencing with  
20 Section 4980) or Chapter 14 (commencing with Section 4990)  
21 shall send a complete report to the Board of Behavioral Sciences  
22 as to any settlement or arbitration award over ten thousand dollars  
23 (\$10,000) of a claim or action for damages for death or personal  
24 injury caused by that person's negligence, error, or omission in  
25 practice, or by his or her rendering of unauthorized professional  
26 services. The report shall be sent within 30 days after the written  
27 settlement agreement has been reduced to writing and signed by  
28 all parties thereto or within 30 days after service of the arbitration  
29 award on the parties.

30 (c) Every insurer providing professional liability insurance to  
31 a dentist licensed pursuant to Chapter 4 (commencing with Section  
32 1600) shall send a complete report to the Dental Board of  
33 California as to any settlement or arbitration award over ten  
34 thousand dollars (\$10,000) of a claim or action for damages for  
35 death or personal injury caused by that person's negligence, error,  
36 or omission in practice, or rendering of unauthorized professional  
37 services. The report shall be sent within 30 days after the written  
38 settlement agreement has been reduced to writing and signed by  
39 all parties thereto or within 30 days after service of the arbitration  
40 award on the parties.

1 (d) Every insurer providing liability insurance to a veterinarian  
2 licensed pursuant to Chapter 11 (commencing with Section 4800)  
3 shall send a complete report to the Veterinary Medical Board of  
4 any settlement or arbitration award over ten thousand dollars  
5 (\$10,000) of a claim or action for damages for death or injury  
6 caused by that person's negligence, error, or omission in practice,  
7 or rendering of unauthorized professional service. The report shall  
8 be sent within 30 days after the written settlement agreement has  
9 been reduced to writing and signed by all parties thereto or within  
10 30 days after service of the arbitration award on the parties.

11 (e) The insurer shall notify the claimant, or if the claimant is  
12 represented by counsel, the insurer shall notify the claimant's  
13 attorney, that the report required by subdivision (a), (b), or (c) has  
14 been sent to the agency. If the attorney has not received this notice  
15 within 45 days after the settlement was reduced to writing and  
16 signed by all of the parties, the arbitration award was served on  
17 the parties, or the date of entry of the civil judgment, the attorney  
18 shall make the report to the agency.

19 (f) Notwithstanding any other provision of law, no insurer shall  
20 enter into a settlement without the written consent of the insured,  
21 except that this prohibition shall not void any settlement entered  
22 into without that written consent. The requirement of written  
23 consent shall only be waived by both the insured and the insurer.  
24 This section shall only apply to a settlement on a policy of  
25 insurance executed or renewed on or after January 1, 1971.

26 SEC. 7. Section 803 of the Business and Professions Code is  
27 amended to read:

28 803. (a) Except as provided in subdivision (b), within 10 days  
29 after a judgment by a court of this state that a person who holds a  
30 license, certificate, or other similar authority from the Board of  
31 Behavioral Sciences or from an agency mentioned in subdivision  
32 (a) of Section 800 (except a person licensed pursuant to Chapter  
33 3 (commencing with Section 1200)) has committed a crime, or is  
34 liable for any death or personal injury resulting in a judgment for  
35 an amount in excess of thirty thousand dollars (\$30,000) caused  
36 by his or her negligence, error or omission in practice, or his or  
37 her rendering unauthorized professional services, the clerk of the  
38 court that rendered the judgment shall report that fact to the agency  
39 that issued the license, certificate, or other similar authority.

(b) For purposes of a physician and surgeon, osteopathic physician and surgeon, or doctor of podiatric medicine, who is liable for any death or personal injury resulting in a judgment of any amount caused by his or her negligence, error or omission in practice, or his or her rendering unauthorized professional services, the clerk of the court that rendered the judgment shall report that fact to the agency that issued the license.

SEC. 8. Section 2089.5 of the Business and Professions Code is amended to read:

2089.5. (a) Clinical instruction in the subjects listed in subdivision (b) of Section 2089 shall meet the requirements of this section and shall be considered adequate if the requirements of subdivision (a) of Section 2089 and the requirements of this section are satisfied.

(b) Instruction in the clinical courses shall total a minimum of 72 weeks in length.

(c) Instruction in the core clinical courses of surgery, medicine, family medicine, pediatrics, obstetrics and gynecology, and psychiatry shall total a minimum of 40 weeks in length with a minimum of eight weeks instruction in surgery, eight weeks in medicine, six weeks in pediatrics, six weeks in obstetrics and gynecology, a minimum of four weeks in family medicine, and four weeks in psychiatry.

(d) Of the instruction required by subdivision (b), including all of the instruction required by subdivision (c), 54 weeks shall be performed in a hospital that sponsors the instruction and shall meet one of the following:

(1) Is a formal part of the medical school or school of osteopathic medicine.

(2) Has a residency program, approved by the Accreditation Council for Graduate Medical Education (ACGME) or the Royal College of Physicians and Surgeons of Canada (RCPSC), in family practice or in the clinical area of the instruction for which credit is being sought.

(3) Is formally affiliated with an approved medical school or school of osteopathic medicine located in the United States or Canada. If the affiliation is limited in nature, credit shall be given only in the subject areas covered by the affiliation agreement.

(4) Is formally affiliated with a medical school or a school of osteopathic medicine located outside the United States or Canada.

1 (e) If the institution, specified in subdivision (d), is formally  
2 affiliated with a medical school or a school of osteopathic medicine  
3 located outside the United States or Canada, it shall meet the  
4 following:

5 (1) The formal affiliation shall be documented by a written  
6 contract detailing the relationship between the medical school, or  
7 a school of osteopathic medicine, and hospital and the  
8 responsibilities of each.

9 (2) The school and hospital shall provide to the board a  
10 description of the clinical program. The description shall be in  
11 sufficient detail to enable the board to determine whether or not  
12 the program provides students an adequate medical education. The  
13 board shall approve the program if it determines that the program  
14 provides an adequate medical education. If the board does not  
15 approve the program, it shall provide its reasons for disapproval  
16 to the school and hospital in writing specifying its findings about  
17 each aspect of the program that it considers to be deficient and the  
18 changes required to obtain approval.

19 (3) The hospital, if located in the United States, shall be  
20 accredited by the Joint Commission on Accreditation of Hospitals,  
21 and if located in another country, shall be accredited in accordance  
22 with the law of that country.

23 (4) The clinical instruction shall be supervised by a full-time  
24 director of medical education, and the head of the department for  
25 each core clinical course shall hold a full-time faculty appointment  
26 of the medical school or school of osteopathic medicine and shall  
27 be board certified or eligible, or have an equivalent credential in  
28 that specialty area appropriate to the country in which the hospital  
29 is located.

30 (5) The clinical instruction shall be conducted pursuant to a  
31 written program of instruction provided by the school.

32 (6) The school shall supervise the implementation of the  
33 program on a regular basis, documenting the level and extent of  
34 its supervision.

35 (7) The hospital-based faculty shall evaluate each student on a  
36 regular basis and shall document the completion of each aspect of  
37 the program for each student.

38 (8) The hospital shall ensure a minimum daily census adequate  
39 to meet the instructional needs of the number of students enrolled



1 in each course area of clinical instruction, but not less than 15  
2 patients in each course area of clinical instruction.

3 (9) The board, in reviewing the application of a foreign medical  
4 graduate, may require the applicant to submit a description of the  
5 clinical program, if the board has not previously approved the  
6 program, and may require the applicant to submit documentation  
7 to demonstrate that the applicant's clinical training met the  
8 requirements of this subdivision.

9 (10) The medical school or school of osteopathic medicine shall  
10 bear the reasonable cost of any site inspection by the board or its  
11 agents necessary to determine whether the clinical program offered  
12 is in compliance with this subdivision.

13 SEC. 9. Section 2096 of the Business and Professions Code is  
14 amended to read:

15 2096. In addition to other requirements of this chapter, before  
16 a physician's and surgeon's license may be issued, each applicant,  
17 including an applicant applying pursuant to Article 5 (commencing  
18 with Section 2100), shall show by evidence satisfactory to the  
19 board that he or she has satisfactorily completed at least one year  
20 of postgraduate training, which includes at least four months of  
21 general medicine, in a postgraduate training program approved by  
22 the Accreditation Council for Graduate Medical Education  
23 (ACGME) or Royal College of Physicians and Surgeons of Canada  
24 (RCPSC).

25 The amendments made to this section at the 1987 portion of the  
26 1987-88 session of the Legislature shall not apply to applicants  
27 who completed their one year of postgraduate training on or before  
28 July 1, 1990.

29 SEC. 10. Section 2102 of the Business and Professions Code  
30 is amended to read:

31 2102. Any applicant whose professional instruction was  
32 acquired in a country other than the United States or Canada shall  
33 provide evidence satisfactory to the board of compliance with the  
34 following requirements to be issued a physician's and surgeon's  
35 certificate:

36 (a) Completion in a medical school or schools of a resident  
37 course of professional instruction equivalent to that required by  
38 Section 2089 and issuance to the applicant of a document  
39 acceptable to the board that shows final and successful completion  
40 of the course. However, nothing in this section shall be construed

1 to require the board to evaluate for equivalency any coursework  
2 obtained at a medical school disapproved by the board pursuant  
3 to this section.

4 (b) Certification by the Educational Commission for Foreign  
5 Medical Graduates, or its equivalent, as determined by the board.  
6 This subdivision shall apply to all applicants who are subject to  
7 this section and who have not taken and passed the written  
8 examination specified in subdivision (d) prior to June 1, 1986.

9 (c) Satisfactory completion of the postgraduate training required  
10 under Section 2096. An applicant shall be required to have  
11 substantially completed the professional instruction required in  
12 subdivision (a) and shall be required to make application to the  
13 board and have passed steps 1 and 2 of the written examination  
14 relating to biomedical and clinical sciences prior to commencing  
15 any postgraduate training in this state. In its discretion, the board  
16 may authorize an applicant who is deficient in any education or  
17 clinical instruction required by Sections 2089 and 2089.5 to make  
18 up any deficiencies as a part of his or her postgraduate training  
19 program, but that remedial training shall be in addition to the  
20 postgraduate training required for licensure.

21 (d) Pass the written examination as provided under Article 9  
22 (commencing with Section 2170). An applicant shall be required  
23 to meet the requirements specified in subdivision (b) prior to being  
24 admitted to the written examination required by this subdivision.

25 Nothing in this section prohibits the board from disapproving  
26 any foreign medical school or from denying an application if, in  
27 the opinion of the board, the professional instruction provided by  
28 the medical school or the instruction received by the applicant is  
29 not equivalent to that required in Article 4 (commencing with  
30 Section 2080).

31 SEC. 11. Section 2107 of the Business and Professions Code  
32 is amended to read:

33 2107. (a) The Legislature intends that the board shall have the  
34 authority to substitute postgraduate education and training to  
35 remedy deficiencies in an applicant's medical school education  
36 and training. The Legislature further intends that applicants who  
37 substantially completed their clinical training shall be granted that  
38 substitute credit if their postgraduate education took place in an  
39 accredited program.

(b) To meet the requirements for licensure set forth in Sections 2089 and 2089.5, the board may require an applicant under this article to successfully complete additional education and training. In determining the content and duration of the required additional education and training, the board shall consider the applicant's medical education and performance on standardized national examinations, and may substitute approved postgraduate training in lieu of specified undergraduate requirements. Postgraduate training substituted for undergraduate training shall be in addition to the postgraduate training required by Sections 2102 and 2103.

SEC. 12. Section 2135 of the Business and Professions Code is amended to read:

2135. The board shall issue a physician and surgeon's certificate to an applicant who meets all of the following requirements:

(a) The applicant holds an unlimited license as a physician and surgeon in another state or states, or in a Canadian province or Canadian provinces, which was issued upon:

(1) Successful completion of a resident course of professional instruction leading to a degree of medical doctor equivalent to that specified in Section 2089. However, nothing in this section shall be construed to require the board to evaluate for equivalency any coursework obtained at a medical school disapproved by the board pursuant to Article 4 (commencing with Section 2080).

(2) Taking and passing a written examination that is recognized by the division to be equivalent in content to that administered in California.

(b) The applicant has held an unrestricted license to practice medicine, in a state or states, in a Canadian province or Canadian provinces, or as a member of the active military, United States Public Health Services, or other federal program, for a period of at least four years. Any time spent by the applicant in an approved postgraduate training program or clinical fellowship acceptable to the board shall not be included in the calculation of this four-year period.

(c) The board determines that no disciplinary action has been taken against the applicant by any medical licensing authority and that the applicant has not been the subject of adverse judgments or settlements resulting from the practice of medicine that the

1 division determines constitutes evidence of a pattern of negligence  
2 or incompetence.

3 (d) The applicant (1) has satisfactorily completed at least one  
4 year of approved postgraduate training and is certified by a  
5 specialty board approved by the American Board of Medical  
6 Specialties or approved by the division pursuant to subdivision (h)  
7 of Section 651; (2) has satisfactorily completed at least two years  
8 of approved postgraduate training; or (3) has satisfactorily  
9 completed at least one year of approved postgraduate training and  
10 takes and passes the clinical competency written examination.

11 (e) The applicant has not committed any acts or crimes  
12 constituting grounds for denial of a certificate under Division 1.5  
13 (commencing with Section 475) or Article 12 (commencing with  
14 Section 2220).

15 (f) Any application received from an applicant who has held an  
16 unrestricted license to practice medicine, in a state or states, or  
17 Canadian province or Canadian provinces, or as a member of the  
18 active military, United States Public Health Services, or other  
19 federal program for four or more years shall be reviewed and  
20 processed pursuant to this section. Any time spent by the applicant  
21 in an approved postgraduate training program or clinical fellowship  
22 acceptable to the board shall not be included in the calculation of  
23 this four-year period. This subdivision does not apply to  
24 applications that may be reviewed and processed pursuant to  
25 Section 2151.

26 *SEC. 13. Section 2168.4 of the Business and Professions Code*  
27 *is amended to read:*

28 2168.4. (a) A special faculty permit expires and becomes  
29 invalid at midnight on the last day of the permitholder's birth  
30 month during the second year of a two-year term, if not renewed.

31 (b) A person who holds a special faculty permit shall show at  
32 the time of license renewal that he or she continues to meet the  
33 eligibility criteria set forth in Section 2168.1. After the first renewal  
34 of a special faculty permit, the permitholder shall not be required  
35 to hold a full-time faculty position, and may instead be employed  
36 part-time in a position that otherwise meets the requirements set  
37 forth in paragraph (1) of subdivision (a) of Section 2168.1.

38 (c) *A person who holds a special faculty permit shall show at*  
39 *the time of license renewal that he or she meets the continuing*

1 *medical education requirements of Article 10 (commencing with*  
2 *Section 2190).*

3 ~~(e)~~

4 *(d)* In addition to the requirements set forth above, a special  
5 faculty permit shall be renewed in accordance with Article 19  
6 (commencing with Section 2420) in the same manner as a  
7 physician's and surgeon's certificate.

8 ~~(e)~~

9 *(e)* Those fees applicable to a physician's and surgeon's  
10 certificate shall also apply to a special faculty permit and shall be  
11 paid into the State Treasury and credited to the Contingent Fund  
12 of the Medical Board of California.

13 *SEC. 14. Section 2169 is added to the Business and Professions*  
14 *Code, to read:*

15 *2169. A person who holds a special faculty permit shall meet*  
16 *the continuing medical education requirements set forth in Article*  
17 *10 (commencing with Section 2190).*

18 ~~SEC. 13.~~

19 *SEC. 15.* Section 2172 of the Business and Professions Code  
20 is repealed.

21 ~~SEC. 14.~~

22 *SEC. 16.* Section 2173 of the Business and Professions Code  
23 is repealed.

24 ~~SEC. 15.~~

25 *SEC. 17.* Section 2174 of the Business and Professions Code  
26 is repealed.

27 ~~SEC. 16.~~

28 *SEC. 18.* Section 2175 of the Business and Professions Code  
29 is amended to read:

30 2175. State examination records shall be kept on file by the  
31 board until June 1, 2069. Examinees shall be known and designated  
32 by number only, and the name attached to the number shall be kept  
33 secret until the examinee is sent notification of the results of the  
34 examinations.

35 ~~SEC. 17.~~

36 *SEC. 19.* Section 2307 of the Business and Professions Code  
37 is amended to read:

38 2307. (a) A person whose certificate has been surrendered  
39 while under investigation or while charges are pending or whose  
40 certificate has been revoked or suspended or placed on probation,

1 may petition the board for reinstatement or modification of penalty,  
2 including modification or termination of probation.

3 (b) The person may file the petition after a period of not less  
4 than the following minimum periods have elapsed from the  
5 effective date of the surrender of the certificate or the decision  
6 ordering that disciplinary action:

7 (1) At least three years for reinstatement of a license surrendered  
8 or revoked for unprofessional conduct, except that the board may,  
9 for good cause shown, specify in a revocation order that a petition  
10 for reinstatement may be filed after two years.

11 (2) At least two years for early termination of probation of three  
12 years or more.

13 (3) At least one year for modification of a condition, or  
14 reinstatement of a license surrendered or revoked for mental or  
15 physical illness, or termination of probation of less than three years.

16 (c) The petition shall state any facts as may be required by the  
17 board. The petition shall be accompanied by at least two verified  
18 recommendations from physicians and surgeons licensed in any  
19 state who have personal knowledge of the activities of the petitioner  
20 since the disciplinary penalty was imposed.

21 (d) The petition may be heard by a panel of the board. The board  
22 may assign the petition to an administrative law judge designated  
23 in Section 11371 of the Government Code. After a hearing on the  
24 petition, the administrative law judge shall provide a proposed  
25 decision to the board or the California Board of Podiatric Medicine,  
26 as applicable, which shall be acted upon in accordance with Section  
27 2335.

28 (e) The panel of the board or the administrative law judge  
29 hearing the petition may consider all activities of the petitioner  
30 since the disciplinary action was taken, the offense for which the  
31 petitioner was disciplined, the petitioner's activities during the  
32 time the certificate was in good standing, and the petitioner's  
33 rehabilitative efforts, general reputation for truth, and professional  
34 ability. The hearing may be continued from time to time as the  
35 administrative law judge designated in Section 11371 of the  
36 Government Code finds necessary.

37 (f) The administrative law judge designated in Section 11371  
38 of the Government Code reinstating a certificate or modifying a  
39 penalty may recommend the imposition of any terms and conditions  
40 deemed necessary.

1 (g) No petition shall be considered while the petitioner is under  
2 sentence for any criminal offense, including any period during  
3 which the petitioner is on court-imposed probation or parole. No  
4 petition shall be considered while there is an accusation or petition  
5 to revoke probation pending against the person. The board may  
6 deny without a hearing or argument any petition filed pursuant to  
7 this section within a period of two years from the effective date  
8 of the prior decision following a hearing under this section.

9 (h) This section is applicable to and may be carried out with  
10 regard to licensees of the California Board of Podiatric Medicine.  
11 In lieu of two verified recommendations from physicians and  
12 surgeons, the petition shall be accompanied by at least two verified  
13 recommendations from doctors of podiatric medicine licensed in  
14 any state who have personal knowledge of the activities of the  
15 petitioner since the date the disciplinary penalty was imposed.

16 (i) Nothing in this section shall be deemed to alter Sections 822  
17 and 823.

18 ~~SEC. 18.~~

19 *SEC. 20.* Section 2335 of the Business and Professions Code  
20 is amended to read:

21 2335. (a) All proposed decisions and interim orders of the  
22 Medical Quality Hearing Panel designated in Section 11371 of the  
23 Government Code shall be transmitted to the executive director  
24 of the board, or the executive director of the California Board of  
25 Podiatric Medicine as to the licensees of that board, within 48  
26 hours of filing.

27 (b) All interim orders shall be final when filed.

28 (c) A proposed decision shall be acted upon by the board or by  
29 any panel appointed pursuant to Section 2008 or by the California  
30 Board of Podiatric Medicine, as the case may be, in accordance  
31 with Section 11517 of the Government Code, except that all of the  
32 following shall apply to proceedings against licensees under this  
33 chapter:

34 (1) When considering a proposed decision, the board or panel  
35 and the California Board of Podiatric Medicine shall give great  
36 weight to the findings of fact of the administrative law judge,  
37 except to the extent those findings of fact are controverted by new  
38 evidence.

39 (2) The board's staff or the staff of the California Board of  
40 Podiatric Medicine shall poll the members of the board or panel

1 or of the California Board of Podiatric Medicine by written mail  
2 ballot concerning the proposed decision. The mail ballot shall be  
3 sent within 10 calendar days of receipt of the proposed decision,  
4 and shall poll each member on whether the member votes to  
5 approve the decision, to approve the decision with an altered  
6 penalty, to refer the case back to the administrative law judge for  
7 the taking of additional evidence, to defer final decision pending  
8 discussion of the case by the panel or board as a whole, or to  
9 nonadopt the decision. No party to the proceeding, including  
10 employees of the agency that filed the accusation, and no person  
11 who has a direct or indirect interest in the outcome of the  
12 proceeding or who presided at a previous stage of the decision,  
13 may communicate directly or indirectly, upon the merits of a  
14 contested matter while the proceeding is pending, with any member  
15 of the panel or board, without notice and opportunity for all parties  
16 to participate in the communication. The votes of a majority of the  
17 board or of the panel, and a majority of the California Board of  
18 Podiatric Medicine, are required to approve the decision with an  
19 altered penalty, to refer the case back to the administrative law  
20 judge for the taking of further evidence, or to nonadopt the  
21 decision. The votes of two members of the panel or board are  
22 required to defer final decision pending discussion of the case by  
23 the panel or board as a whole. If there is a vote by the specified  
24 number to defer final decision pending discussion of the case by  
25 the panel or board as a whole, provision shall be made for that  
26 discussion before the 100-day period specified in paragraph (3)  
27 expires, but in no event shall that 100-day period be extended.

28 (3) If a majority of the board or of the panel, or a majority of  
29 the California Board of Podiatric Medicine vote to do so, the board  
30 or the panel or the California Board of Podiatric Medicine shall  
31 issue an order of nonadoption of a proposed decision within 100  
32 calendar days of the date it is received by the board. If the board  
33 or the panel or the California Board of Podiatric Medicine does  
34 not refer the case back to the administrative law judge for the  
35 taking of additional evidence or issue an order of nonadoption  
36 within 100 days, the decision shall be final and subject to review  
37 under Section 2337. Members of the board or of any panel or of  
38 the California Board of Podiatric Medicine who review a proposed  
39 decision or other matter and vote by mail as provided in paragraph



1 (2) shall return their votes by mail to the board within 30 days  
2 from receipt of the proposed decision or other matter.

3 (4) The board or the panel or the California Board of Podiatric  
4 Medicine shall afford the parties the opportunity to present oral  
5 argument before deciding a case after nonadoption of the  
6 administrative law judge's decision.

7 (5) A vote of a majority of the board or of a panel, or a majority  
8 of the California Board of Podiatric Medicine, are required to  
9 increase the penalty from that contained in the proposed  
10 administrative law judge's decision. No member of the board or  
11 panel or of the California Board of Podiatric Medicine may vote  
12 to increase the penalty except after reading the entire record and  
13 personally hearing any additional oral argument and evidence  
14 presented to the panel or board.

15 ~~SEC. 19.~~

16 *SEC. 21.* Section 2486 of the Business and Professions Code  
17 is amended to read:

18 2486. The Medical Board of California shall issue, upon the  
19 recommendation of the board, a certificate to practice podiatric  
20 medicine if the applicant has submitted directly to the board from  
21 the credentialing organizations verification that he or she meets  
22 all of the following requirements:

23 (a) The applicant has graduated from an approved school or  
24 college of podiatric medicine and meets the requirements of Section  
25 2483.

26 (b) The applicant, within the past 10 years, has passed parts I,  
27 II, and III of the examination administered by the National Board  
28 of Podiatric Medical Examiners of the United States or has passed  
29 a written examination that is recognized by the board to be the  
30 equivalent in content to the examination administered by the  
31 National Board of Podiatric Medical Examiners of the United  
32 States.

33 (c) The applicant has satisfactorily completed the postgraduate  
34 training required by Section 2484.

35 (d) The applicant has passed within the past 10 years any oral  
36 and practical examination that may be required of all applicants  
37 by the board to ascertain clinical competence.

38 (e) The applicant has committed no acts or crimes constituting  
39 grounds for denial of a certificate under Division 1.5 (commencing  
40 with Section 475).

1 (f) The board determines that no disciplinary action has been  
2 taken against the applicant by any podiatric licensing authority  
3 and that the applicant has not been the subject of adverse judgments  
4 or settlements resulting from the practice of podiatric medicine  
5 that the board determines constitutes evidence of a pattern of  
6 negligence or incompetence.

7 (g) A disciplinary databank report regarding the applicant is  
8 received by the board from the Federation of Podiatric Medical  
9 Boards.

10 ~~SEC. 20.~~

11 *SEC. 22.* Section 2488 of the Business and Professions Code  
12 is amended to read:

13 2488. Notwithstanding any other provision of law, the Medical  
14 Board of California shall issue, upon the recommendation of the  
15 board, a certificate to practice podiatric medicine by credentialing  
16 if the applicant has submitted directly to the board from the  
17 credentialing organizations verification that he or she is licensed  
18 as a doctor of podiatric medicine in any other state and meets all  
19 of the following requirements:

20 (a) The applicant has graduated from an approved school or  
21 college of podiatric medicine.

22 (b) The applicant, within the past 10 years, has passed either  
23 part III of the examination administered by the National Board of  
24 Podiatric Medical Examiners of the United States or a written  
25 examination that is recognized by the board to be the equivalent  
26 in content to the examination administered by the National Board  
27 of Podiatric Medical Examiners of the United States.

28 (c) The applicant has satisfactorily completed a postgraduate  
29 training program approved by the Council on Podiatric Medical  
30 Education.

31 (d) The applicant, within the past 10 years, has passed any oral  
32 and practical examination that may be required of all applicants  
33 by the board to ascertain clinical competence.

34 (e) The applicant has committed no acts or crimes constituting  
35 grounds for denial of a certificate under Division 1.5 (commencing  
36 with Section 475).

37 (f) The board determines that no disciplinary action has been  
38 taken against the applicant by any podiatric licensing authority  
39 and that the applicant has not been the subject of adverse judgments  
40 or settlements resulting from the practice of podiatric medicine

1 that the board determines constitutes evidence of a pattern of  
2 negligence or incompetence.

3 (g) A disciplinary databank report regarding the applicant from  
4 the Federation of Podiatric Medical Boards.

5 ~~SEC. 21.~~

6 SEC. 23. Section 2570.5 of the Business and Professions Code  
7 is amended to read:

8 2570.5. (a) A limited permit may be granted to any person  
9 who has completed the education and experience requirements of  
10 this chapter.

11 (b) A person who meets the qualifications to be admitted to the  
12 examination for licensure or certification under this chapter and  
13 is waiting to take the examination or awaiting the announcement  
14 of the results of the examination, according to the application  
15 requirements for a limited permit, may practice as an occupational  
16 therapist or as an occupational therapy assistant under the direction  
17 and appropriate supervision of an occupational therapist duly  
18 licensed under this chapter. If that person fails to pass the  
19 examination during the initial eligibility period, all privileges under  
20 this section shall automatically cease upon due notice to the  
21 applicant of that failure and may not be renewed.

22 (c) A limited permit shall be subject to other requirements set  
23 forth in rules adopted by the board.

24 ~~SEC. 22.~~

25 SEC. 24. Section 2570.6 of the Business and Professions Code  
26 is amended to read:

27 2570.6. An applicant applying for a license as an occupational  
28 therapist or certification as an occupational therapy assistant shall  
29 file with the board a written application provided by the board,  
30 showing to the satisfaction of the board that he or she meets all of  
31 the following requirements:

32 (a) That the applicant is in good standing and has not committed  
33 acts or crimes constituting grounds for denial of a license under  
34 Section 480.

35 (b) (1) That the applicant has successfully completed the  
36 academic requirements of an educational program for occupational  
37 therapists or occupational therapy assistants that is approved by  
38 the board and accredited by the American Occupational Therapy  
39 Association's Accreditation Council for Occupational Therapy  
40 Education (ACOTE), or accredited or approved by the American

1 Occupational Therapy Association's (OTA) predecessor  
2 organization, or approved by OTA's Career Mobility Program.

3 (2) The curriculum of an educational program for occupational  
4 therapists shall contain the content required by the ACOTE  
5 accreditation standards, or as approved by OTA's predecessor  
6 organization, or as approved by OTA's Career Mobility Program,  
7 including all of the following subjects:

8 (A) Biological, behavioral, and health sciences.

9 (B) Structure and function of the human body, including  
10 anatomy, kinesiology, physiology, and the neurosciences.

11 (C) Human development throughout the life span.

12 (D) Human behavior in the context of sociocultural systems.

13 (E) Etiology, clinical course, management, and prognosis of  
14 disease processes and traumatic injuries, and the effects of those  
15 conditions on human functioning.

16 (F) Occupational therapy theory, practice, and processes.

17 (3) The curriculum of an educational program for occupational  
18 therapy assistants shall contain the content required by the ACOTE  
19 accreditation standards, or as approved or accredited by OTA's  
20 predecessor organization, including all of the following subjects:

21 (A) Biological, behavioral, and health sciences.

22 (B) Structure and function of the normal human body.

23 (C) Human development.

24 (D) Conditions commonly referred to occupational therapists.

25 (E) Occupational therapy principles and skills.

26 (c) (1) For an applicant who is a graduate of an occupational  
27 therapy or occupational therapy assistant educational program who  
28 is unable to provide evidence of having met the requirements of  
29 paragraph (2) or (3) of subdivision (b), he or she may demonstrate  
30 passage of the examination administered by the National Board  
31 for Certification in Occupational Therapy, the American  
32 Occupational Therapy Certification Board, or the American  
33 Occupational Therapy Association, as evidence of having  
34 successfully satisfied the requirements of paragraph (2) or (3) of  
35 subdivision (b).

36 (2) For an applicant who completed OTA's Career Mobility  
37 Program, he or she shall demonstrate participation in the program  
38 and passage of the examination administered by the National Board  
39 for Certification in Occupational Therapy, the American  
40 Occupational Therapy Certification Board, or the American

1 Occupational Therapy Association, as evidence of having  
2 successfully satisfied the requirements of paragraphs (1) and (2)  
3 of subdivision (b).

4 (d) That the applicant has successfully completed a period of  
5 supervised fieldwork experience approved by the board and  
6 arranged by a recognized educational institution where he or she  
7 met the academic requirements of subdivision (b) or (c) or arranged  
8 by a nationally recognized professional association. The fieldwork  
9 requirements for applicants applying for licensure as an  
10 occupational therapist or certification as an occupational therapy  
11 assistant shall be consistent with the requirements of the ACOTE  
12 accreditation standards, or AOTA's predecessor organization, or  
13 AOTA's Career Mobility Program, that were in effect when the  
14 applicant completed his or her educational program.

15 (e) That the applicant has passed an examination as provided  
16 in Section 2570.7.

17 (f) That the applicant, at the time of application, is a person over  
18 18 years of age, is not addicted to alcohol or any controlled  
19 substance, and has not committed acts or crimes constituting  
20 grounds for denial of licensure or certification under Section 480.

21 *SEC. 25. Section 2570.7 of the Business and Professions Code*  
22 *is amended to read:*

23 2570.7. (a) An applicant who has satisfied the requirements  
24 of Section 2570.6 may apply for examination for licensure or  
25 certification in a manner prescribed by the board. Subject to the  
26 provisions of this chapter, an applicant who fails an examination  
27 may apply for reexamination.

28 (b) Each applicant for licensure or certification shall successfully  
29 complete the entry level certification examination for occupational  
30 therapists or occupational therapy assistants approved by the board,  
31 such as the examination administered by the National Board for  
32 Certification in Occupational Therapy ~~or by another nationally~~  
33 ~~recognized credentialing body, the American Occupational Therapy~~  
34 *Certification Board, or the American Occupational Therapy*  
35 *Association*. The examination shall be appropriately validated.  
36 Each applicant shall be examined by written examination to test  
37 his or her knowledge of the basic and clinical sciences relating to  
38 occupational therapy, occupational therapy techniques and  
39 methods, and any other subjects that the board may require to  
40 determine the applicant's fitness to practice under this chapter.

1 (c) Applicants for licensure or certification shall be examined  
2 at a time and place and under that supervision as the board may  
3 require.

4 ~~SEC. 23.~~

5 *SEC. 26.* Section 2570.185 of the Business and Professions  
6 Code is amended and renumbered to read:

7 2570.18.5. (a) An occupational therapist shall document his  
8 or her evaluation, goals, treatment plan, and summary of treatment  
9 in the patient record.

10 (b) An occupational therapy assistant shall document the services  
11 provided in the patient record.

12 (c) Occupational therapists and occupational therapy assistants  
13 shall document and sign the patient record legibly.

14 (d) Patient records shall be maintained for a period of no less  
15 than seven years following the discharge of the patient, except that  
16 the records of unemancipated minors shall be maintained at least  
17 one year after the minor has reached the age of 18 years, and not  
18 in any case less than seven years.

19 ~~SEC. 24.~~

20 *SEC. 27.* Section 2570.36 is added to the Business and  
21 Professions Code, to read:

22 2570.36. If a licensee has knowledge that an applicant or  
23 licensee may be in violation of, or has violated, any of the statutes  
24 or regulations administered by the board, the licensee shall report  
25 this information to the board in writing and shall cooperate with  
26 the board in providing information or assistance as may be  
27 required.

28 ~~SEC. 25.~~

29 *SEC. 28.* Section 2760.1 of the Business and Professions Code  
30 is amended to read:

31 2760.1. (a) A registered nurse whose license has been revoked  
32 or suspended or who has been placed on probation may petition  
33 the board for reinstatement or modification of penalty, including  
34 reduction or termination of probation, after a period not less than  
35 the following minimum periods has elapsed from the effective  
36 date of the decision ordering that disciplinary action, or if the order  
37 of the board or any portion of it is stayed by the board itself or by  
38 the superior court, from the date the disciplinary action is actually  
39 implemented in its entirety, or for a registered nurse whose initial

1 license application is subject to a disciplinary decision, from the  
2 date the initial license was issued:

3 (1) Except as otherwise provided in this section, at least three  
4 years for reinstatement of a license that was revoked, except that  
5 the board may, in its sole discretion, specify in its order a lesser  
6 period of time provided that the period shall be not less than one  
7 year.

8 (2) At least two years for early termination of a probation period  
9 of three years or more.

10 (3) At least one year for modification of a condition, or  
11 reinstatement of a license revoked for mental or physical illness,  
12 or termination of probation of less than three years.

13 (b) The board shall give notice to the Attorney General of the  
14 filing of the petition. The petitioner and the Attorney General shall  
15 be given timely notice by letter of the time and place of the hearing  
16 on the petition, and an opportunity to present both oral and  
17 documentary evidence and argument to the board. The petitioner  
18 shall at all times have the burden of proof to establish by clear and  
19 convincing evidence that he or she is entitled to the relief sought  
20 in the petition.

21 (c) The hearing may be continued from time to time as the board  
22 deems appropriate.

23 (d) The board itself shall hear the petition and the administrative  
24 law judge shall prepare a written decision setting forth the reasons  
25 supporting the decision.

26 (e) The board may grant or deny the petition, or may impose  
27 any terms and conditions that it reasonably deems appropriate as  
28 a condition of reinstatement or reduction of penalty.

29 (f) The petitioner shall provide a current set of fingerprints  
30 accompanied by the necessary fingerprinting fee.

31 (g) No petition shall be considered while the petitioner is under  
32 sentence for any criminal offense, including any period during  
33 which the petitioner is on court-imposed probation or parole, or  
34 subject to an order of registration pursuant to Section 290 of the  
35 Penal Code. No petition shall be considered while there is an  
36 accusation or petition to revoke probation pending against the  
37 petitioner.

38 (h) Except in those cases where the petitioner has been  
39 disciplined pursuant to Section 822, the board may in its discretion  
40 deny without hearing or argument any petition that is filed pursuant

1 to this section within a period of two years from the effective date  
2 of a prior decision following a hearing under this section.

3 ~~SEC. 26.~~

4 *SEC. 29.* Section 3503 of the Business and Professions Code  
5 is amended to read:

6 3503. No person other than one who has been licensed to  
7 practice as a physician assistant shall practice as a physician  
8 assistant or in a similar capacity to a physician and surgeon or  
9 podiatrist or hold himself or herself out as a “physician assistant,”  
10 or shall use any other term indicating or implying that he or she  
11 is a physician assistant.

12 ~~SEC. 27.~~

13 *SEC. 30.* Section 3517 of the Business and Professions Code  
14 is amended to read:

15 3517. The committee shall require a written examination of  
16 physician assistants in the manner and under the rules and  
17 regulations as it shall prescribe, but the examination shall be  
18 conducted in that manner as to ensure that the identity of each  
19 applicant taking the examination will be unknown to all of the  
20 examiners until all examination papers have been graded. Except  
21 as otherwise provided in this chapter, or by regulation, no physician  
22 assistant applicant shall receive approval under this chapter without  
23 first successfully passing an examination given under the direction  
24 of the committee.

25 Examinations for licensure as a physician assistant may be  
26 required by the committee under a uniform examination system,  
27 and for that purpose the committee may make those arrangements  
28 with organizations furnishing examination material as may, in its  
29 discretion, be desirable. The committee shall, however, establish  
30 a passing score for each examination. The licensure examination  
31 for physician assistants shall be held by the committee at least  
32 once a year with such additional examinations as the committee  
33 deems necessary. The time and place of examination shall be fixed  
34 by the committee.

35 ~~SEC. 28.~~

36 *SEC. 31.* Section 3518 of the Business and Professions Code  
37 is amended to read:

38 3518. The committee shall keep current, two separate registers,  
39 one for approved supervising physicians and one for licensed  
40 physician’s assistants, by specialty if applicable. These registers



1 shall show the name of each licensee, his or her last known address  
2 of record, and the date of his or her licensure or approval. Any  
3 interested person is entitled to obtain a copy of the register in  
4 accordance with the Information Practices Act of 1977 (Chapter  
5 1 (commencing with Section 1798) of Title 1.8 of Part 4 of  
6 Division 3 of the Civil Code) upon application to the committee  
7 together with a sum as may be fixed by the committee, which  
8 amount shall not exceed the cost of this list so furnished.

9 ~~SEC. 29.~~

10 *SEC. 32.* Section 3625 of the Business and Professions Code  
11 is amended to read:

12 3625. (a) The Director of Consumer Affairs shall establish an  
13 advisory council consisting of nine members. Members of the  
14 advisory council shall include three members who are California  
15 licensed naturopathic doctors, or have met the requirements for  
16 licensure pursuant to this chapter, three members who are  
17 California licensed physicians and surgeons, and three public  
18 members.

19 (b) A member of the advisory council shall be appointed for a  
20 four-year term. A person shall not serve as a member of the council  
21 for more than two consecutive terms. A member shall hold office  
22 until the appointment and qualification of his or her successor, or  
23 until one year from the expiration of the term for which the member  
24 was appointed, whichever first occurs. Vacancies shall be filled  
25 by appointment for unexpired terms. The first terms of the members  
26 first appointed shall be as follows:

27 (1) The Governor shall appoint one physician and surgeon  
28 member, one naturopathic doctor member, and one public member,  
29 with term expirations of June 1, 2006; one physician and surgeon  
30 member with a term expiration date of June 1, 2007; and one  
31 naturopathic doctor member with a term expiration date of June  
32 1, 2008.

33 (2) The Senate Committee on Rules shall appoint one physician  
34 and surgeon member with a term expiration of June 1, 2008, and  
35 one public member with a term expiration of June 1, 2007.

36 (3) The Speaker of the Assembly shall appoint one naturopathic  
37 doctor member with a term expiration of June 1, 2007, and one  
38 public member with a term expiration of June 1, 2008.

1 (c) (1) A public member of the advisory council shall be a  
2 citizen of this state for at least five years preceding his or her  
3 appointment.

4 (2) A person shall not be appointed as a public member if the  
5 person or the person's immediate family in any manner owns an  
6 interest in a college, school, or institution engaged in naturopathic  
7 education, or the person or the person's immediate family has an  
8 economic interest in naturopathy or has any other conflict of  
9 interest. "Immediate family" means the public member's spouse,  
10 parents, children, or his or her children's spouses.

11 (d) In order to operate in as cost-effective a manner as possible,  
12 the advisory council and any advisory committee created pursuant  
13 to this chapter shall meet as few times as necessary to perform its  
14 duties.

15 ~~SEC. 30.~~

16 *SEC. 33.* Section 3633.1 of the Business and Professions Code  
17 is amended to read:

18 3633.1. The bureau may grant a license to an applicant who  
19 meets the requirements of Section 3630, but who graduated prior  
20 to 1986, pre-NPLEX, and passed a state or Canadian Province  
21 naturopathic licensing examination. Applications under this section  
22 shall be received no later than December 31, 2010.

23 ~~SEC. 31.~~

24 *SEC. 34.* Section 3635 of the Business and Professions Code  
25 is amended to read:

26 3635. (a) In addition to any other qualifications and  
27 requirements for licensure renewal, the bureau shall require the  
28 satisfactory completion of 60 hours of approved continuing  
29 education biennially. This requirement is waived for the initial  
30 license renewal. The continuing education shall meet the following  
31 requirements:

32 (1) At least 20 hours shall be in pharmacotherapeutics.

33 (2) No more than 15 hours may be in naturopathic medical  
34 journals or osteopathic or allopathic medical journals, or audio or  
35 videotaped presentations, slides, programmed instruction, or  
36 computer-assisted instruction or preceptorships.

37 (3) No more than 20 hours may be in any single topic.

38 (4) No more than 15 hours of the continuing education  
39 requirements for the specialty certificate in naturopathic childbirth

1 attendance shall apply to the 60 hours of continuing education  
2 requirement.

3 (b) The continuing education requirements of this section may  
4 be met through continuing education courses approved by the  
5 bureau, the California Naturopathic Doctors Association, the  
6 American Association of Naturopathic Physicians, the California  
7 State Board of Pharmacy, the State Board of Chiropractic  
8 Examiners, or other courses that meet the standards for continuing  
9 education for licensed physicians and surgeons in California.

10 ~~SEC. 32.~~

11 *SEC. 35.* Section 3636 of the Business and Professions Code  
12 is amended to read:

13 3636. (a) Upon a written request, the bureau may grant inactive  
14 status to a naturopathic doctor who is in good standing and who  
15 meets the requirements of Section 462.

16 (b) A person whose license is in inactive status may not engage  
17 in any activity for which a license is required under this chapter.

18 (c) A person whose license is in inactive status shall be exempt  
19 from continuing education requirements while his or her license  
20 is in that status.

21 (d) To restore a license to active status, a person whose license  
22 is in inactive status must fulfill continuing education requirements  
23 for the two-year period prior to reactivation, and be current with  
24 all licensing fees as determined by the bureau.

25 ~~SEC. 33.~~

26 *SEC. 36.* Section 3685 of the Business and Professions Code  
27 is amended to read:

28 3685. (a) This chapter shall become inoperative on July 1,  
29 2010, and, as of January 1, 2011, is repealed, unless a later enacted  
30 statute that is enacted before January 1, 2011, deletes or extends  
31 the dates on which it becomes inoperative and is repealed. The  
32 repeal of this chapter renders the bureau subject to the review  
33 required by Division 1.2 (commencing with Section 473).

34 (b) The bureau shall prepare the report required by Section 473.2  
35 no later than September 1, 2008.

36 ~~SEC. 34.~~

37 *SEC. 37.* Section 3750.5 of the Business and Professions Code  
38 is amended to read:

1 3750.5. In addition to any other grounds specified in this  
2 chapter, the board may deny, suspend, or revoke the license of any  
3 applicant or licenseholder who has done any of the following:

4 (a) Obtained, possessed, used, or administered to himself or  
5 herself, in violation of law, or furnished or administered to another,  
6 any controlled substances, as defined in Division 10 (commencing  
7 with Section 11000) of the Health and Safety Code, or any  
8 dangerous drug, as defined in Article 2 (commencing with Section  
9 4015) of Chapter 9, except as directed by a licensed physician and  
10 surgeon, dentist, podiatrist, or other authorized health care provider.

11 (b) Used any controlled substance as defined in Division 10  
12 (commencing with Section 11000) of the Health and Safety Code,  
13 any dangerous drug as defined in Article 2 (commencing with  
14 Section 4015) of Chapter 9, or any alcoholic beverage, to an extent  
15 or in a manner dangerous or injurious to himself or herself, another  
16 person, or the public, or to the extent that the use impaired his or  
17 her ability to conduct with safety to the public the practice  
18 authorized by his or her license.

19 (c) Applied for employment or worked in any health care  
20 profession or environment while under the influence of alcohol.

21 (d) Been convicted of a criminal offense involving the  
22 consumption or self-administration of any of the substances  
23 described in subdivision (a), or the possession of, or falsification  
24 of a record pertaining to, the substances described in subdivision  
25 (a), in which event the record of the conviction is conclusive  
26 evidence thereof.

27 (e) Been committed or confined by a court of competent  
28 jurisdiction for intemperate use of or addiction to the use of any  
29 of the substances described in subdivisions (a), (b), and (c), in  
30 which event the court order of commitment or confinement is  
31 prima facie evidence of that commitment or confinement.

32 (f) Falsified, or made grossly incorrect, grossly inconsistent, or  
33 unintelligible entries in any hospital, patient, or other record  
34 pertaining to the substances described in subdivision (a).

35 ~~SEC. 35.~~

36 *SEC. 38.* Section 3753.5 of the Business and Professions Code  
37 is amended to read:

38 3753.5. (a) In any order issued in resolution of a disciplinary  
39 proceeding before the board, the board or the administrative law  
40 judge may direct any practitioner or applicant found to have

1 committed a violation or violations of law, or any term and  
2 condition of board probation, to pay to the board a sum not to  
3 exceed the costs of the investigation and prosecution of the case.  
4 A certified copy of the actual costs, or a good faith estimate of  
5 costs where actual costs are not available, signed by the official  
6 custodian of the record or his or her designated representative shall  
7 be prima facie evidence of the actual costs of the investigation and  
8 prosecution of the case.

9 (b) The costs shall be assessed by the administrative law judge  
10 and shall not be increased by the board; however, the costs may  
11 be imposed or increased by the board if it does not adopt the  
12 proposed decision of the case.

13 Where an order for recovery of costs is made and timely payment  
14 is not made as directed in the board's decision the board may  
15 enforce the order for repayment in any appropriate court. This  
16 right of enforcement shall be in addition to any other rights the  
17 board may have as to any practitioner directed to pay costs.

18 (c) In any action for recovery of costs, proof of the board's  
19 decision shall be conclusive proof of the validity of the order of  
20 payment and the terms for payment.

21 (d) (1) The board shall not renew or reinstate the license of any  
22 licensee who has failed to pay all of the costs ordered under this  
23 section.

24 (2) Notwithstanding paragraph (1), the board may, in its  
25 discretion, conditionally renew, for a maximum of one year, the  
26 license of any licensee who demonstrates financial hardship,  
27 through documentation satisfactory to the board, and who enters  
28 into a formal agreement with the board to reimburse the board  
29 within that one-year period for those unpaid costs.

30 ~~SEC. 36.~~

31 *SEC. 39.* Section 3773 of the Business and Professions Code  
32 is amended to read:

33 3773. (a) At the time of application for renewal of a respiratory  
34 care practitioner license, the licensee shall notify the board of all  
35 of the following:

36 (1) Whether he or she has been convicted of any crime  
37 subsequent to the licensee's previous renewal.

38 (2) The name and address of the licensee's current employer or  
39 employers.

(b) The licensee shall cooperate in providing additional information as requested by the board. If a licensee fails to provide the requested information within 30 days, the license shall become inactive until the information is received.

~~SEC. 37.~~

*SEC. 40.* Section 4022.5 of the Business and Professions Code is amended to read:

4022.5. (a) "Designated representative" means an individual to whom a license has been granted pursuant to Section 4053. A pharmacist fulfilling the duties of Section 4053 shall not be required to obtain a license as a designated representative.

(b) "Designated representative-in-charge" means a designated representative or a pharmacist proposed by a wholesaler or veterinary food-animal drug retailer and approved by the board as the supervisor or manager responsible for ensuring the wholesaler's or veterinary food-animal drug retailer's compliance with all state and federal laws and regulations pertaining to practice in the applicable license category.

(c) This section shall become operative on January 1, 2006.

~~SEC. 38.~~

*SEC. 41.* Section 4027 of the Business and Professions Code is amended to read:

4027. (a) As used in this chapter, the terms "skilled nursing facility," "intermediate care facility," and other references to health facilities shall be construed with respect to the definitions contained in Article 1 (commencing with Section 1250) of Chapter 2 of Division 2 of the Health and Safety Code.

(b) As used in Section 4052.1, "licensed health care facility" means a facility licensed pursuant to Article 1 (commencing with Section 1250) of Chapter 2 of Division 2 of the Health and Safety Code or a facility, as defined in Section 1250 of the Health and Safety Code, operated by a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code.

(c) As used in Section 4052.2, "health care facility" means a facility, other than a facility licensed under Division 2 (commencing with Section 1200) of the Health and Safety Code, that is owned or operated by a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of the Health and Safety Code, or by an organization under common

1 ownership or control of the health care service plan; “licensed  
2 home health agency” means a private or public organization  
3 licensed by the State Department of Health Services pursuant to  
4 Chapter 8 (commencing with Section 1725) of Division 2 of the  
5 Health and Safety Code, as further defined in Section 1727 of the  
6 Health and Safety Code; and “licensed clinic” means a clinic  
7 licensed pursuant to Article 1 (commencing with Section 1200)  
8 of Chapter 1 of Division 2 of the Health and Safety Code.

9 (d) “Licensed health care facility” or “facility,” as used in  
10 Section 4065, means a health facility licensed pursuant to Article  
11 1 (commencing with Section 1250) of Chapter 2 of Division 2 of  
12 the Health and Safety Code or a facility that is owned or operated  
13 by a health care service plan licensed pursuant to Chapter 2.2  
14 (commencing with Section 1340) of Division 2 of the Health and  
15 Safety Code or by an organization under common ownership or  
16 control with the health care service plan.

17 ~~SEC. 39.~~

18 *SEC. 42.* Section 4036.5 is added to the Business and  
19 Professions Code, to read:

20 4036.5. “Pharmacist-in-charge” means a pharmacist proposed  
21 by a pharmacy and approved by the board as the supervisor or  
22 manager responsible for ensuring the pharmacy’s compliance with  
23 all state and federal laws and regulations pertaining to the practice  
24 of pharmacy.

25 ~~SEC. 40.~~

26 *SEC. 43.* Section 4040 of the Business and Professions Code  
27 is amended to read:

28 4040. (a) “Prescription” means an oral, written, or electronic  
29 transmission order that is both of the following:

30 (1) Given individually for the person or persons for whom  
31 ordered that includes all of the following:

32 (A) The name or names and address of the patient or patients.

33 (B) The name and quantity of the drug or device prescribed and  
34 the directions for use.

35 (C) The date of issue.

36 (D) Either rubber stamped, typed, or printed by hand or typeset,  
37 the name, address, and telephone number of the prescriber, his or  
38 her license classification, and his or her federal registry number,  
39 if a controlled substance is prescribed.

1 (E) A legible, clear notice of the condition for which the drug  
2 is being prescribed, if requested by the patient or patients.

3 (F) If in writing, signed by the prescriber issuing the order, or  
4 the certified nurse-midwife, nurse practitioner, physician assistant,  
5 or naturopathic doctor who issues a drug order pursuant to Section  
6 2746.51, 2836.1, 3502.1, or 3640.5, respectively, or the pharmacist  
7 who issues a drug order pursuant to either Section 4052.1 or  
8 4052.2.

9 (2) Issued by a physician, dentist, optometrist, podiatrist,  
10 veterinarian, or naturopathic doctor pursuant to Section 3640.7 or,  
11 if a drug order is issued pursuant to Section 2746.51, 2836.1,  
12 3502.1, or 3460.5, by a certified nurse-midwife, nurse practitioner,  
13 physician assistant, or naturopathic doctor licensed in this state,  
14 or pursuant to either Section 4052.1 or 4052.2 by a pharmacist  
15 licensed in this state.

16 (b) Notwithstanding subdivision (a), a written order of the  
17 prescriber for a dangerous drug, except for any Schedule II  
18 controlled substance, that contains at least the name and signature  
19 of the prescriber, the name and address of the patient in a manner  
20 consistent with paragraph (2) of subdivision (a) of Section 11164  
21 of the Health and Safety Code, the name and quantity of the drug  
22 prescribed, directions for use, and the date of issue may be treated  
23 as a prescription by the dispensing pharmacist as long as any  
24 additional information required by subdivision (a) is readily  
25 retrievable in the pharmacy. In the event of a conflict between this  
26 subdivision and Section 11164 of the Health and Safety Code,  
27 Section 11164 of the Health and Safety Code shall prevail.

28 (c) "Electronic transmission prescription" includes both image  
29 and data prescriptions. "Electronic image transmission  
30 prescription" means any prescription order for which a facsimile  
31 of the order is received by a pharmacy from a licensed prescriber.  
32 "Electronic data transmission prescription" means any prescription  
33 order, other than an electronic image transmission prescription,  
34 that is electronically transmitted from a licensed prescriber to a  
35 pharmacy.

36 (d) The use of commonly used abbreviations shall not invalidate  
37 an otherwise valid prescription.

38 (e) Nothing in the amendments made to this section (formerly  
39 Section 4036) at the 1969 Regular Session of the Legislature shall  
40 be construed as expanding or limiting the right that a chiropractor,



1 while acting within the scope of his or her license, may have to  
2 prescribe a device.

3 ~~SEC. 41.~~

4 *SEC. 44.* Section 4051 of the Business and Professions Code  
5 is amended to read:

6 4051. (a) Except as otherwise provided in this chapter, it is  
7 unlawful for any person to manufacture, compound, furnish, sell,  
8 or dispense any dangerous drug or dangerous device, or to dispense  
9 or compound any prescription pursuant to Section 4040 of a  
10 prescriber unless he or she is a pharmacist under this chapter.

11 (b) Notwithstanding any other law, a pharmacist may authorize  
12 the initiation of a prescription, pursuant to Section 4052.1, 4052.2,  
13 or 4052.3, and otherwise provide clinical advice or information or  
14 patient consultation if all of the following conditions are met:

15 (1) The clinical advice or information or patient consultation is  
16 provided to a health care professional or to a patient.

17 (2) The pharmacist has access to prescription, patient profile,  
18 or other relevant medical information for purposes of patient and  
19 clinical consultation and advice.

20 (3) Access to the information described in paragraph (2) is  
21 secure from unauthorized access and use.

22 ~~SEC. 42.~~

23 *SEC. 45.* Section 4059.5 of the Business and Professions Code  
24 is amended to read:

25 4059.5. (a) Except as otherwise provided in this chapter,  
26 dangerous drugs or dangerous devices may only be ordered by an  
27 entity licensed by the board and shall be delivered to the licensed  
28 premises and signed for and received by a pharmacist. Where a  
29 licensee is permitted to operate through a designated representative,  
30 the designated representative shall sign for and receive the delivery.

31 (b) A dangerous drug or dangerous device transferred, sold, or  
32 delivered to a person within this state shall be transferred, sold, or  
33 delivered only to an entity licensed by the board, to a manufacturer,  
34 or to an ultimate user or the ultimate user's agent.

35 (c) Notwithstanding subdivisions (a) and (b), deliveries to a  
36 hospital pharmacy may be made to a central receiving location  
37 within the hospital. However, the dangerous drugs or dangerous  
38 devices shall be delivered to the licensed pharmacy premises within  
39 one working day following receipt by the hospital, and the

1 pharmacist on duty at that time shall immediately inventory the  
2 dangerous drugs or dangerous devices.

3 (d) Notwithstanding any other provision of law, a dangerous  
4 drug or dangerous device may be ordered by and provided to a  
5 manufacturer, physician, dentist, podiatrist, optometrist,  
6 veterinarian, naturopathic doctor pursuant to Section 3640.7, or  
7 laboratory, or a physical therapist acting within the scope of his  
8 or her license. A person or entity receiving delivery of a dangerous  
9 drug or dangerous device, or a duly authorized representative of  
10 the person or entity, shall sign for the receipt of the dangerous drug  
11 or dangerous device.

12 (e) A dangerous drug or dangerous device shall not be  
13 transferred, sold, or delivered to a person outside this state, whether  
14 foreign or domestic, unless the transferor, seller, or deliverer does  
15 so in compliance with the laws of this state and of the United States  
16 and of the state or country to which the dangerous drugs or  
17 dangerous devices are to be transferred, sold, or delivered.  
18 Compliance with the laws of this state and the United States and  
19 of the state or country to which the dangerous drugs or dangerous  
20 devices are to be delivered shall include, but not be limited to,  
21 determining that the recipient of the dangerous drugs or dangerous  
22 devices is authorized by law to receive the dangerous drugs or  
23 dangerous devices.

24 (f) Notwithstanding subdivision (a), a pharmacy may take  
25 delivery of dangerous drugs and dangerous devices when the  
26 pharmacy is closed and no pharmacist is on duty if all of the  
27 following requirements are met:

28 (1) The drugs are placed in a secure storage facility in the same  
29 building as the pharmacy.

30 (2) Only the pharmacist-in-charge or a pharmacist designated  
31 by the pharmacist-in-charge has access to the secure storage facility  
32 after dangerous drugs or dangerous devices have been delivered.

33 (3) The secure storage facility has a means of indicating whether  
34 it has been entered after dangerous drugs or dangerous devices  
35 have been delivered.

36 (4) The pharmacy maintains written policies and procedures for  
37 the delivery of dangerous drugs and dangerous devices to a secure  
38 storage facility.

39 (5) The agent delivering dangerous drugs and dangerous devices  
40 pursuant to this subdivision leaves documents indicating the name

1 and amount of each dangerous drug or dangerous device delivered  
2 in the secure storage facility.

3 The pharmacy shall be responsible for the dangerous drugs and  
4 dangerous devices delivered to the secure storage facility. The  
5 pharmacy shall also be responsible for obtaining and maintaining  
6 records relating to the delivery of dangerous drugs and dangerous  
7 devices to a secure storage facility.

8 (g) This section shall become operative on January 1, 2006.

9 ~~SEC. 43.~~

10 *SEC. 46.* Section 4060 of the Business and Professions Code  
11 is amended to read:

12 4060. No person shall possess any controlled substance, except  
13 that furnished to a person upon the prescription of a physician,  
14 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor  
15 pursuant to Section 3640.7, or furnished pursuant to a drug order  
16 issued by a certified nurse-midwife pursuant to Section 2746.51,  
17 a nurse practitioner pursuant to Section 2836.1, a physician  
18 assistant pursuant to Section 3502.1, a naturopathic doctor pursuant  
19 to Section 3640.5, or a pharmacist pursuant to either Section 4052.1  
20 or 4052.2. This section shall not apply to the possession of any  
21 controlled substance by a manufacturer, wholesaler, pharmacy,  
22 pharmacist, physician, podiatrist, dentist, optometrist, veterinarian,  
23 naturopathic doctor, certified nurse-midwife, nurse practitioner,  
24 or physician assistant, when in stock in containers correctly labeled  
25 with the name and address of the supplier or producer.

26 Nothing in this section authorizes a certified nurse-midwife, a  
27 nurse practitioner, a physician assistant, or a naturopathic doctor,  
28 to order his or her own stock of dangerous drugs and devices.

29 ~~SEC. 44.~~

30 *SEC. 47.* Section 4062 of the Business and Professions Code  
31 is amended to read:

32 4062. (a) Notwithstanding Section 4059 or any other provision  
33 of law, a pharmacist may, in good faith, furnish a dangerous drug  
34 or dangerous device in reasonable quantities without a prescription  
35 during a federal, state, or local emergency, to further the health  
36 and safety of the public. A record containing the date, name, and  
37 address of the person to whom the drug or device is furnished, and  
38 the name, strength, and quantity of the drug or device furnished  
39 shall be maintained. The pharmacist shall communicate this  
40 information to the patient's attending physician as soon as possible.

1 Notwithstanding Section 4060 or any other provision of law, a  
2 person may possess a dangerous drug or dangerous device  
3 furnished without prescription pursuant to this section.

4 (b) During a declared federal, state, or local emergency, the  
5 board may waive application of any provisions of this chapter or  
6 the regulations adopted pursuant to it if, in the board's opinion,  
7 the waiver will aid in the protection of public health or the  
8 provision of patient care.

9 (c) During a declared federal, state, or local emergency, the  
10 board shall allow for the employment of a mobile pharmacy in  
11 impacted areas in order to ensure the continuity of patient care, if  
12 all of the following conditions are met:

13 (1) The mobile pharmacy shares common ownership with at  
14 least one currently licensed pharmacy in good standing.

15 (2) The mobile pharmacy retains records of dispensing, as  
16 required by subdivision (a).

17 (3) A licensed pharmacist is on the premises and the mobile  
18 pharmacy is under the control and management of a pharmacist  
19 while the drugs are being dispensed.

20 (4) Reasonable security measures are taken to safeguard the  
21 drug supply maintained in the mobile pharmacy.

22 (5) The mobile pharmacy is located within the declared  
23 emergency area or affected areas.

24 (6) The mobile pharmacy ceases the provision of services within  
25 48 hours following the termination of the declared emergency.

26 ~~SEC. 45.~~

27 *SEC. 48.* Section 4076 of the Business and Professions Code  
28 is amended to read:

29 4076. (a) A pharmacist shall not dispense any prescription  
30 except in a container that meets the requirements of state and  
31 federal law and is correctly labeled with all of the following:

32 (1) Except where the prescriber or the certified nurse-midwife  
33 who functions pursuant to a standardized procedure or protocol  
34 described in Section 2746.51, the nurse practitioner who functions  
35 pursuant to a standardized procedure described in Section 2836.1,  
36 or protocol, the physician assistant who functions pursuant to  
37 Section 3502.1, the naturopathic doctor who functions pursuant  
38 to a standardized procedure or protocol described in Section  
39 3640.5, or the pharmacist who functions pursuant to a policy,  
40 procedure, or protocol pursuant to either Section 4052.1 or 4052.2

1 orders otherwise, either the manufacturer's trade name of the drug  
2 or the generic name and the name of the manufacturer. Commonly  
3 used abbreviations may be used. Preparations containing two or  
4 more active ingredients may be identified by the manufacturer's  
5 trade name or the commonly used name or the principal active  
6 ingredients.

7 (2) The directions for the use of the drug.

8 (3) The name of the patient or patients.

9 (4) The name of the prescriber or, if applicable, the name of the  
10 certified nurse-midwife who functions pursuant to a standardized  
11 procedure or protocol described in Section 2746.51, the nurse  
12 practitioner who functions pursuant to a standardized procedure  
13 described in Section 2836.1, or protocol, the physician assistant  
14 who functions pursuant to Section 3502.1, the naturopathic doctor  
15 who functions pursuant to a standardized procedure or protocol  
16 described in Section 3640.5, or the pharmacist who functions  
17 pursuant to a policy, procedure, or protocol pursuant to either  
18 Section 4052.1 or 4052.2.

19 (5) The date of issue.

20 (6) The name and address of the pharmacy, and prescription  
21 number or other means of identifying the prescription.

22 (7) The strength of the drug or drugs dispensed.

23 (8) The quantity of the drug or drugs dispensed.

24 (9) The expiration date of the effectiveness of the drug  
25 dispensed.

26 (10) The condition for which the drug was prescribed if  
27 requested by the patient and the condition is indicated on the  
28 prescription.

29 (11) (A) Commencing January 1, 2006, the physical description  
30 of the dispensed medication, including its color, shape, and any  
31 identification code that appears on the tablets or capsules, except  
32 as follows:

33 (i) Prescriptions dispensed by a veterinarian.

34 (ii) An exemption from the requirements of this paragraph shall  
35 be granted to a new drug for the first 120 days that the drug is on  
36 the market and for the 90 days during which the national reference  
37 file has no description on file.

38 (iii) Dispensed medications for which no physical description  
39 exists in any commercially available database.

40 (B) This paragraph applies to outpatient pharmacies only.

1 (C) The information required by this paragraph may be printed  
2 on an auxiliary label that is affixed to the prescription container.

3 (D) This paragraph shall not become operative if the board,  
4 prior to January 1, 2006, adopts regulations that mandate the same  
5 labeling requirements set forth in this paragraph.

6 (b) If a pharmacist dispenses a prescribed drug by means of a  
7 unit dose medication system, as defined by administrative  
8 regulation, for a patient in a skilled nursing, intermediate care, or  
9 other health care facility, the requirements of this section will be  
10 satisfied if the unit dose medication system contains the  
11 aforementioned information or the information is otherwise readily  
12 available at the time of drug administration.

13 (c) If a pharmacist dispenses a dangerous drug or device in a  
14 facility licensed pursuant to Section 1250 of the Health and Safety  
15 Code, it is not necessary to include on individual unit dose  
16 containers for a specific patient, the name of the certified  
17 nurse-midwife who functions pursuant to a standardized procedure  
18 or protocol described in Section 2746.51, the nurse practitioner  
19 who functions pursuant to a standardized procedure described in  
20 Section 2836.1, or protocol, the physician assistant who functions  
21 pursuant to Section 3502.1, the naturopathic doctor who functions  
22 pursuant to a standardized procedure or protocol described in  
23 Section 3640.5, or the pharmacist who functions pursuant to a  
24 policy, procedure, or protocol pursuant to either Section 4052.1  
25 or 4052.2.

26 (d) If a pharmacist dispenses a prescription drug for use in a  
27 facility licensed pursuant to Section 1250 of the Health and Safety  
28 Code, it is not necessary to include the information required in  
29 paragraph (11) of subdivision (a) when the prescription drug is  
30 administered to a patient by a person licensed under the Medical  
31 Practice Act (Chapter 5 (commencing with Section 2000)), the  
32 Nursing Practice Act (Chapter 6 (commencing with Section 2700)),  
33 or the Vocational Nursing Practice Act (Chapter 6.5 (commencing  
34 with Section 2840)), who is acting within his or her scope of  
35 practice.

36 ~~SEC. 46.~~

37 *SEC. 49.* Section 4081 of the Business and Professions Code  
38 is amended to read:

39 4081. (a) All records of manufacture and of sale, acquisition,  
40 or disposition of dangerous drugs or dangerous devices shall be

at all times during business hours open to inspection by authorized officers of the law, and shall be preserved for at least three years from the date of making. A current inventory shall be kept by every manufacturer, wholesaler, pharmacy, veterinary food-animal drug retailer, physician, dentist, podiatrist, veterinarian, laboratory, clinic, hospital, institution, or establishment holding a currently valid and unrevoked certificate, license, permit, registration, or exemption under Division 2 (commencing with Section 1200) of the Health and Safety Code or under Part 4 (commencing with Section 16000) of Division 9 of the Welfare and Institutions Code who maintains a stock of dangerous drugs or dangerous devices.

(b) The owner, officer, and partner of a pharmacy, wholesaler, or veterinary food-animal drug retailer shall be jointly responsible, with the pharmacist-in-charge or designated representative-in-charge, for maintaining the records and inventory described in this section.

(c) The pharmacist-in-charge or designated representative-in-charge shall not be criminally responsible for acts of the owner, officer, partner, or employee that violate this section and of which the pharmacist-in-charge or designated representative-in-charge had no knowledge, or in which he or she did not knowingly participate.

(d) This section shall become operative on January 1, 2006.

~~SEC. 47.~~

*SEC. 50.* Section 4110 of the Business and Professions Code is amended to read:

4110. (a) No person shall conduct a pharmacy in the State of California unless he or she has obtained a license from the board. A license shall be required for each pharmacy owned or operated by a specific person. A separate license shall be required for each of the premises of any person operating a pharmacy in more than one location. The license shall be renewed annually. The board may, by regulation, determine the circumstances under which a license may be transferred.

(b) The board may, at its discretion, issue a temporary permit, when the ownership of a pharmacy is transferred from one person to another, upon the conditions and for any periods of time as the board determines to be in the public interest. A temporary permit fee shall be established by the board at an amount not to exceed the annual fee for renewal of a permit to conduct a pharmacy.

1 When needed to protect public safety, a temporary permit may be  
2 issued for a period not to exceed 180 days, and may be issued  
3 subject to terms and conditions the board deems necessary. If the  
4 board determines a temporary permit was issued by mistake or  
5 denies the application for a permanent license or registration, the  
6 temporary license or registration shall terminate upon either  
7 personal service of the notice of termination upon the permitholder  
8 or service by certified mail, return receipt requested, at the  
9 permitholder's address of record with the board, whichever comes  
10 first. Neither for purposes of retaining a temporary permit nor for  
11 purposes of any disciplinary or license denial proceeding before  
12 the board shall the temporary permitholder be deemed to have a  
13 vested property right or interest in the permit.

14 (c) The board may allow the temporary use of a mobile  
15 pharmacy when a pharmacy is destroyed or damaged, the mobile  
16 pharmacy is necessary to protect the health and safety of the public,  
17 and the following conditions are met:

18 (1) The mobile pharmacy shall provide services only on or  
19 immediately contiguous to the site of the damaged or destroyed  
20 pharmacy.

21 (2) The mobile pharmacy is under the control and management  
22 of the pharmacist-in-charge of the pharmacy that was destroyed  
23 or damaged.

24 (3) A licensed pharmacist is on the premises while drugs are  
25 being dispensed.

26 (4) Reasonable security measures are taken to safeguard the  
27 drug supply maintained in the mobile pharmacy.

28 (5) The pharmacy operating the mobile pharmacy provides the  
29 board with records of the destruction or damage of the pharmacy  
30 and an expected restoration date.

31 (6) Within three calendar days of restoration of the pharmacy  
32 services, the board is provided with notice of the restoration of the  
33 permanent pharmacy.

34 (7) The mobile pharmacy is not operated for more than 48 hours  
35 following the restoration of the permanent pharmacy.

36 ~~SEC. 48.~~

37 *SEC. 51.* Section 4111 of the Business and Professions Code  
38 is amended to read:



1 4111. (a) Except as otherwise provided in subdivision (b), (d),  
2 or (e), the board shall not issue or renew a license to conduct a  
3 pharmacy to any of the following:

4 (1) A person or persons authorized to prescribe or write a  
5 prescription, as specified in Section 4040, in the State of California.

6 (2) A person or persons with whom a person or persons specified  
7 in paragraph (1) shares a community or other financial interest in  
8 the permit sought.

9 (3) Any corporation that is controlled by, or in which 10 percent  
10 or more of the stock is owned by a person or persons prohibited  
11 from pharmacy ownership by paragraph (1) or (2).

12 (b) Subdivision (a) shall not preclude the issuance of a permit  
13 for an inpatient hospital pharmacy to the owner of the hospital in  
14 which it is located.

15 (c) The board may require any information the board deems is  
16 reasonably necessary for the enforcement of this section.

17 (d) Subdivision (a) shall not preclude the issuance of a new or  
18 renewal license for a pharmacy to be owned or owned and operated  
19 by a person licensed on or before August 1, 1981, under the  
20 Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2  
21 (commencing with Section 1340) of Division 2 of the Health and  
22 Safety Code) and qualified on or before August 1, 1981, under  
23 subsection (d) of Section 1310 of Title XIII of the federal Public  
24 Health Service Act, as amended, whose ownership includes persons  
25 defined pursuant to paragraphs (1) and (2) of subdivision (a).

26 (e) Subdivision (a) shall not preclude the issuance of a new or  
27 renewal license for a pharmacy to be owned or owned and operated  
28 by a pharmacist authorized to issue a drug order pursuant to Section  
29 4052.1 or 4052.2.

30 ~~SEC. 49.~~

31 *SEC. 52.* Section 4126.5 of the Business and Professions Code  
32 is amended to read:

33 4126.5. (a) A pharmacy may furnish dangerous drugs only to  
34 the following:

35 (1) A wholesaler owned or under common control by the  
36 wholesaler from whom the dangerous drug was acquired.

37 (2) The pharmaceutical manufacturer from whom the dangerous  
38 drug was acquired.

39 (3) A licensed wholesaler acting as a reverse distributor.

(4) Another pharmacy or wholesaler to alleviate a temporary shortage of a dangerous drug that could result in the denial of health care. A pharmacy furnishing dangerous drugs pursuant to this paragraph may only furnish a quantity sufficient to alleviate the temporary shortage.

(5) A patient or to another pharmacy pursuant to a prescription or as otherwise authorized by law.

(6) A health care provider that is not a pharmacy but that is authorized to purchase dangerous drugs.

(7) To another pharmacy under common control.

(b) Notwithstanding any other provision of law, a violation of this section may subject the person or persons who committed the violation to a fine not to exceed the amount specified in Section 125.9 for each occurrence pursuant to a citation issued by the board.

(c) Amounts due from any person under this section on or after January 1, 2005, shall be offset as provided under Section 12419.5 of the Government Code. Amounts received by the board under this section shall be deposited into the Pharmacy Board Contingent Fund.

(d) For purposes of this section, “common control” means the power to direct or cause the direction of the management and policies of another person whether by ownership, by voting rights, by contract, or by other means.

*SEC. 53. Section 4161 of the Business and Professions Code is amended to read:*

4161. (a) A person located outside this state that (1) ships, sells, mails, or delivers dangerous drugs or dangerous devices into this state or (2) sells, brokers, or distributes dangerous drugs or devices within this state shall be considered a nonresident wholesaler.

(b) A nonresident wholesaler shall be licensed by the board prior to shipping, selling, mailing, or delivering dangerous drugs or dangerous devices to a site located in this state or selling, brokering, or distributing dangerous drugs or devices within this state.

(c) A separate license shall be required for each place of business owned or operated by a nonresident wholesaler from or through which dangerous drugs or dangerous devices are shipped, sold, mailed, or delivered to a site located in this state or sold, brokered,

1 *or distributed within this state.* A license shall be renewed annually  
2 and shall not be transferable.

3 (d) The following information shall be reported, in writing, to  
4 the board at the time of initial application for licensure by a  
5 nonresident wholesaler, on renewal of a nonresident wholesaler  
6 license, or within 30 days of a change in that information:

7 (1) Its agent for service of process in this state.

8 (2) Its principal corporate officers, as specified by the board, if  
9 any.

10 (3) Its general partners, as specified by the board, if any.

11 (4) Its owners if the applicant is not a corporation or partnership.

12 (e) A report containing the information in subdivision (d) shall  
13 be made within 30 days of any change of ownership, office,  
14 corporate officer, or partner.

15 (f) A nonresident wholesaler shall comply with all directions  
16 and requests for information from the regulatory or licensing  
17 agency of the state in which it is licensed, as well as with all  
18 requests for information made by the board.

19 (g) A nonresident wholesaler shall maintain records of dangerous  
20 drugs and dangerous devices sold, traded, or transferred to persons  
21 in this state *or within this state*, so that the records are in a readily  
22 retrievable form.

23 (h) A nonresident wholesaler shall at all times maintain a valid,  
24 unexpired license, permit, or registration to conduct the business  
25 of the wholesaler in compliance with the laws of the state in which  
26 it is a resident. An application for a nonresident wholesaler license  
27 in this state shall include a license verification from the licensing  
28 authority in the applicant's state of residence.

29 (i) The board may not issue or renew a nonresident wholesaler  
30 license until the nonresident wholesaler identifies a designated  
31 representative-in-charge and notifies the board in writing of the  
32 identity and license number of the designated  
33 representative-in-charge.

34 (j) The designated representative-in-charge shall be responsible  
35 for the nonresident wholesaler's compliance with state and federal  
36 laws governing wholesalers. A nonresident wholesaler shall  
37 identify and notify the board of a new designated  
38 representative-in-charge within 30 days of the date that the prior  
39 designated representative-in-charge ceases to be the designated  
40 representative-in-charge.

(k) The board may issue a temporary license, upon conditions and for periods of time as the board determines to be in the public interest. A temporary license fee shall be five hundred fifty dollars (\$550) or another amount established by the board not to exceed the annual fee for renewal of a license to compound injectable sterile drug products. When needed to protect public safety, a temporary license may be issued for a period not to exceed 180 days, subject to terms and conditions that the board deems necessary. If the board determines that a temporary license was issued by mistake or denies the application for a permanent license, the temporary license shall terminate upon either personal service of the notice of termination upon the licenseholder or service by certified mail, return receipt requested, at the licenseholder's address of record with the board, whichever occurs first. Neither for purposes of retaining a temporary license, nor for purposes of any disciplinary or license denial proceeding before the board, shall the temporary licenseholder be deemed to have a vested property right or interest in the license.

(l) The registration fee shall be the fee specified in subdivision (f) of Section 4400.

~~SEC. 50.~~

*SEC. 54.* Section 4174 of the Business and Professions Code is amended to read:

4174. Notwithstanding any other provision of law, a pharmacist may dispense drugs or devices upon the drug order of a nurse practitioner functioning pursuant to Section 2836.1 or a certified nurse-midwife functioning pursuant to Section 2746.51, a drug order of a physician assistant functioning pursuant to Section 3502.1 or a naturopathic doctor functioning pursuant to Section 3640.5, or the order of a pharmacist acting under Section 4052.1, 4052.2, or 4052.3.

~~SEC. 51.~~

*SEC. 55.* Section 4231 of the Business and Professions Code is amended to read:

4231. (a) The board shall not renew a pharmacist license unless the applicant submits proof satisfactory to the board that he or she has successfully completed 30 hours of approved courses of continuing pharmacy education during the two years preceding the application for renewal.

1 (b) Notwithstanding subdivision (a), the board shall not require  
2 completion of continuing education for the first renewal of a  
3 pharmacist license.

4 (c) If an applicant for renewal of a pharmacist license submits  
5 the renewal application and payment of the renewal fee but does  
6 not submit proof satisfactory to the board that the licensee has  
7 completed 30 hours of continuing pharmacy education, the board  
8 shall not renew the license and shall issue the applicant an inactive  
9 pharmacist license. A licensee with an inactive pharmacist license  
10 issued pursuant to this section may obtain an active pharmacist  
11 license by paying the renewal fees due and submitting satisfactory  
12 proof to the board that the licensee has completed 30 hours of  
13 continuing pharmacy education.

14 (d) If, as part of an investigation or audit conducted by the board,  
15 a pharmacist fails to provide documentation substantiating the  
16 completion of continuing education as required in subdivision (a),  
17 the board shall cancel the active pharmacist license and issue an  
18 inactive pharmacist license in its place. A licensee with an inactive  
19 pharmacist license issued pursuant to this section may obtain an  
20 active pharmacist license by paying the renewal fees due and  
21 submitting satisfactory proof to the board that the licensee has  
22 completed 30 hours of continuing pharmacy education.

23 ~~SEC. 52.~~

24 *SEC. 56.* Section 4301 of the Business and Professions Code  
25 is amended to read:

26 4301. The board shall take action against any holder of a license  
27 who is guilty of unprofessional conduct or whose license has been  
28 procured by fraud or misrepresentation or issued by mistake.  
29 Unprofessional conduct shall include, but is not limited to, any of  
30 the following:

31 (a) Gross immorality.

32 (b) Incompetence.

33 (c) Gross negligence.

34 (d) The clearly excessive furnishing of controlled substances  
35 in violation of subdivision (a) of Section 11153 of the Health and  
36 Safety Code.

37 (e) The clearly excessive furnishing of controlled substances in  
38 violation of subdivision (a) of Section 11153.5 of the Health and  
39 Safety Code. Factors to be considered in determining whether the  
40 furnishing of controlled substances is clearly excessive shall

1 include, but not be limited to, the amount of controlled substances  
2 furnished, the previous ordering pattern of the customer (including  
3 size and frequency of orders), the type and size of the customer,  
4 and where and to whom the customer distributes its product.

5 (f) The commission of any act involving moral turpitude,  
6 dishonesty, fraud, deceit, or corruption, whether the act is  
7 committed in the course of relations as a licensee or otherwise,  
8 and whether the act is a felony or misdemeanor or not.

9 (g) Knowingly making or signing any certificate or other  
10 document that falsely represents the existence or nonexistence of  
11 a state of facts.

12 (h) The administering to oneself, of any controlled substance,  
13 or the use of any dangerous drug or of alcoholic beverages to the  
14 extent or in a manner as to be dangerous or injurious to oneself,  
15 to a person holding a license under this chapter, or to any other  
16 person or to the public, or to the extent that the use impairs the  
17 ability of the person to conduct with safety to the public the practice  
18 authorized by the license.

19 (i) Except as otherwise authorized by law, knowingly selling,  
20 furnishing, giving away, or administering, or offering to sell,  
21 furnish, give away, or administer, any controlled substance to an  
22 addict.

23 (j) The violation of any of the statutes of this state, of any other  
24 state, or of the United States regulating controlled substances and  
25 dangerous drugs.

26 (k) The conviction of more than one misdemeanor or any felony  
27 involving the use, consumption, or self-administration of any  
28 dangerous drug or alcoholic beverage, or any combination of those  
29 substances.

30 (l) The conviction of a crime substantially related to the  
31 qualifications, functions, and duties of a licensee under this chapter.  
32 The record of conviction of a violation of Chapter 13 (commencing  
33 with Section 801) of Title 21 of the United States Code regulating  
34 controlled substances or of a violation of the statutes of this state  
35 regulating controlled substances or dangerous drugs shall be  
36 conclusive evidence of unprofessional conduct. In all other cases,  
37 the record of conviction shall be conclusive evidence only of the  
38 fact that the conviction occurred. The board may inquire into the  
39 circumstances surrounding the commission of the crime, in order  
40 to fix the degree of discipline or, in the case of a conviction not

1 involving controlled substances or dangerous drugs, to determine  
2 if the conviction is of an offense substantially related to the  
3 qualifications, functions, and duties of a licensee under this chapter.  
4 A plea or verdict of guilty or a conviction following a plea of nolo  
5 contendere is deemed to be a conviction within the meaning of  
6 this provision. The board may take action when the time for appeal  
7 has elapsed, or the judgment of conviction has been affirmed on  
8 appeal or when an order granting probation is made suspending  
9 the imposition of sentence, irrespective of a subsequent order under  
10 Section 1203.4 of the Penal Code allowing the person to withdraw  
11 his or her plea of guilty and to enter a plea of not guilty, or setting  
12 aside the verdict of guilty, or dismissing the accusation,  
13 information, or indictment.

14 (m) The cash compromise of a charge of violation of Chapter  
15 13 (commencing with Section 801) of Title 21 of the United States  
16 Code regulating controlled substances or of Chapter 7  
17 (commencing with Section 14000) of Part 3 of Division 9 of the  
18 Welfare and Institutions Code relating to the Medi-Cal program.  
19 The record of the compromise is conclusive evidence of  
20 unprofessional conduct.

21 (n) The revocation, suspension, or other discipline by another  
22 state of a license to practice pharmacy, operate a pharmacy, or do  
23 any other act for which a license is required by this chapter.

24 (o) Violating or attempting to violate, directly or indirectly, or  
25 assisting in or abetting the violation of or conspiring to violate any  
26 provision or term of this chapter or of the applicable federal and  
27 state laws and regulations governing pharmacy, including  
28 regulations established by the board or by any other state or federal  
29 regulatory agency.

30 (p) Actions or conduct that would have warranted denial of a  
31 license.

32 (q) Engaging in any conduct that subverts or attempts to subvert  
33 an investigation of the board.

34 (r) The selling, trading, transferring, or furnishing of drugs  
35 obtained pursuant to Section 256b of Title 42 of the United States  
36 Code to any person a licensee knows or reasonably should have  
37 known, not to be a patient of a covered entity, as defined in  
38 paragraph (4) of subsection (a) of Section 256b of Title 42 of the  
39 United States Code.

(s) The clearly excessive furnishing of dangerous drugs by a wholesaler to a pharmacy that primarily or solely dispenses prescription drugs to patients of long-term care facilities. Factors to be considered in determining whether the furnishing of dangerous drugs is clearly excessive shall include, but not be limited to, the amount of dangerous drugs furnished to a pharmacy that primarily or solely dispenses prescription drugs to patients of long-term care facilities, the previous ordering pattern of the pharmacy, and the general patient population to whom the pharmacy distributes the dangerous drugs. That a wholesaler has established, and employs, a tracking system that complies with the requirements of subdivision (b) of Section 4164 shall be considered in determining whether there has been a violation of this subdivision. This provision shall not be interpreted to require a wholesaler to obtain personal medical information or be authorized to permit a wholesaler to have access to personal medical information except as otherwise authorized by Section 56 and following of the Civil Code. For purposes of this section, "long-term care facility" shall have the same meaning given the term in Section 1418 of the Health and Safety Code.

(t) This section shall become operative on January 1, 2006.

~~SEC. 53.~~

*SEC. 57.* Section 4305 of the Business and Professions Code is amended to read:

4305. (a) Failure by any pharmacist to notify the board in writing that he or she has ceased to act as pharmacist-in-charge of a pharmacy, or by any pharmacy to notify the board in writing that a pharmacist-in-charge is no longer acting in that capacity, within the 30-day period specified in Sections 4101 and 4113 shall constitute grounds for disciplinary action.

(b) Operation of a pharmacy for more than 30 days without supervision or management by a pharmacist-in-charge shall constitute grounds for disciplinary action.

(c) Any person who has obtained a license to conduct a pharmacy, who willfully fails to timely notify the board that the pharmacist-in-charge of the pharmacy has ceased to act in that capacity, and who continues to permit the compounding or dispensing of prescriptions, or the furnishing of drugs or poisons, in his or her pharmacy, except by a pharmacist subject to the supervision and management of a responsible pharmacist-in-charge,



1 shall be subject to summary suspension or revocation of his or her  
2 license to conduct a pharmacy.

3 ~~SEC. 54.~~

4 *SEC. 58.* Section 4329 of the Business and Professions Code  
5 is amended to read:

6 4329. Any nonpharmacist who takes charge of or acts as  
7 supervisor, manager, or pharmacist-in-charge of any pharmacy,  
8 or who compounds or dispenses a prescription or furnishes  
9 dangerous drugs except as otherwise provided in this chapter, is  
10 guilty of a misdemeanor.

11 ~~SEC. 55.~~

12 *SEC. 59.* Section 4330 of the Business and Professions Code  
13 is amended to read:

14 4330. (a) Any person who has obtained a license to conduct  
15 a pharmacy, who fails to place in charge of the pharmacy a  
16 pharmacist, or any person, who by himself or herself, or by any  
17 other person, permits the compounding or dispensing of  
18 prescriptions, or the furnishing of dangerous drugs, in his or her  
19 pharmacy, except by a pharmacist, or as otherwise provided in this  
20 chapter, is guilty of a misdemeanor.

21 (b) Any pharmacy owner who commits any act that would  
22 subvert or tend to subvert the efforts of the pharmacist-in-charge  
23 to comply with the laws governing the operation of the pharmacy  
24 is guilty of a misdemeanor.

25 ~~SEC. 56.~~

26 *SEC. 60.* Section 4980.03 of the Business and Professions Code  
27 is amended to read:

28 4980.03. (a) "Board," as used in this chapter, means the Board  
29 of Behavioral Sciences.

30 (b) "Intern," as used in this chapter, means an unlicensed person  
31 who has earned his or her master's or doctor's degree qualifying  
32 him or her for licensure and is registered with the board.

33 (c) "Trainee," as used in this chapter, means an unlicensed  
34 person who is currently enrolled in a master's or doctor's degree  
35 program, as specified in Section 4980.40, that is designed to qualify  
36 him or her for licensure under this chapter, and who has completed  
37 no less than 12 semester units or 18 quarter units of coursework  
38 in any qualifying degree program.

39 (d) "Applicant," as used in this chapter, means an unlicensed  
40 person who has completed a master's or doctoral degree program,

1 as specified in Section 4980.40, and whose application for  
2 registration as an intern is pending, or an unlicensed person who  
3 has completed the requirements for licensure as specified in this  
4 chapter, is no longer registered with the board as an intern, and is  
5 currently in the examination process.

6 (e) “Advertise,” as used in this chapter, includes, but is not  
7 limited to, the issuance of any card, sign, or device to any person,  
8 or the causing, permitting, or allowing of any sign or marking on,  
9 or in, any building or structure, or in any newspaper or magazine  
10 or in any directory, or any printed matter whatsoever, with or  
11 without any limiting qualification. It also includes business  
12 solicitations communicated by radio or television broadcasting.  
13 Signs within church buildings or notices in church bulletins mailed  
14 to a congregation shall not be construed as advertising within the  
15 meaning of this chapter.

16 (f) “Experience,” as used in this chapter, means experience in  
17 interpersonal relationships, psychotherapy, marriage and family  
18 therapy, and professional enrichment activities that satisfies the  
19 requirement for licensure as a marriage and family therapist  
20 pursuant to Section 4980.40.

21 (g) “Supervisor,” as used in this chapter, means an individual  
22 who meets all of the following requirements:

23 (1) Has been licensed by a state regulatory agency for at least  
24 two years as a marriage and family therapist, licensed clinical  
25 social worker, licensed psychologist, or licensed physician certified  
26 in psychiatry by the American Board of Psychiatry and Neurology.

27 (2) Has not provided therapeutic services to the trainee or intern.

28 (3) Has a current and valid license that is not under suspension  
29 or probation.

30 (4) Complies with supervision requirements established by this  
31 chapter and by board regulations.

32 (h) “Client-centered advocacy,” as used in this chapter, includes  
33 researching, identifying, and accessing resources, or other activities,  
34 related to obtaining or providing services and supports for clients  
35 or groups of clients receiving psychotherapy or counseling services.

36 ~~SEC. 57.~~

37 *SEC. 61.* Section 4980.04 is added to the Business and  
38 Professions Code, to read:

39 4980.04. This chapter shall be known and may be cited as the  
40 Marriage and Family ~~Therapy~~ *Therapist Act*.

1     ~~SEC. 58.~~

2     *SEC. 62.* Section 4980.30 of the Business and Professions Code  
3 is amended to read:

4     4980.30. Except as otherwise provided herein, a person desiring  
5 to practice and to advertise the performance of marriage and family  
6 therapy services shall apply to the board for a license, shall pay  
7 the license fee required by this chapter, and obtain a license from  
8 the board.

9     ~~SEC. 59.~~

10    *SEC. 63.* Section 4980.43 of the Business and Professions Code  
11 is amended to read:

12    4980.43. (a) Prior to applying for licensure examinations, each  
13 applicant shall complete experience that shall comply with the  
14 following:

15    (1) A minimum of 3,000 hours completed during a period of at  
16 least 104 weeks.

17    (2) Not more than 40 hours in any seven consecutive days.

18    (3) Not less than 1,700 hours of supervised experience  
19 completed subsequent to the granting of the qualifying master's  
20 or doctor's degree.

21    (4) Not more than 1,300 hours of experience obtained prior to  
22 completing a master's or doctor's degree. This experience shall  
23 be composed as follows:

24    (A) Not more than 750 hours of counseling and direct supervisor  
25 contact.

26    (B) Not more than 250 hours of professional enrichment  
27 activities, excluding personal psychotherapy as described in  
28 paragraph (2) of subdivision (I).

29    (C) Not more than 100 hours of personal psychotherapy as  
30 described in paragraph (2) of subdivision (I). The applicant shall  
31 be credited for three hours of experience for each hour of personal  
32 psychotherapy.

33    (5) No hours of experience may be gained prior to completing  
34 either 12 semester units or 18 quarter units of graduate instruction  
35 and becoming a trainee except for personal psychotherapy.

36    (6) No hours of experience gained more than six years prior to  
37 the date the application for examination eligibility was filed, except  
38 that up to 500 hours of clinical experience gained in the supervised  
39 practicum required by subdivision (b) of Section 4980.40 shall be  
40 exempt from this six-year requirement.

1 (7) Not more than a total of 1,000 hours of experience for direct  
2 supervisor contact and professional enrichment activities.

3 (8) Not more than 500 hours of experience providing group  
4 therapy or group counseling.

5 (9) Not more than 250 hours of postdegree experience  
6 administering and evaluating psychological tests of counselees,  
7 writing clinical reports, writing progress notes, or writing process  
8 notes.

9 (10) Not more than 250 hours of experience providing  
10 counseling or crisis counseling on the telephone.

11 (11) Not less than 500 total hours of experience in diagnosing  
12 and treating couples, families, and children.

13 (12) Not more than 125 hours of experience providing personal  
14 psychotherapy services via telemedicine in accordance with Section  
15 2290.5.

16 (b) All applicants, trainees, and registrants shall be at all times  
17 under the supervision of a supervisor who shall be responsible for  
18 ensuring that the extent, kind, and quality of counseling performed  
19 is consistent with the training and experience of the person being  
20 supervised, and who shall be responsible to the board for  
21 compliance with all laws, rules, and regulations governing the  
22 practice of marriage and family therapy. Supervised experience  
23 shall be gained by interns and trainees either as an employee or as  
24 a volunteer. The requirements of this chapter regarding gaining  
25 hours of experience and supervision are applicable equally to  
26 employees and volunteers. Experience shall not be gained by  
27 interns or trainees as an independent contractor.

28 (c) Supervision shall include at least one hour of direct  
29 supervisor contact in each week for which experience is credited  
30 in each work setting, as specified:

31 (1) A trainee shall receive an average of at least one hour of  
32 direct supervisor contact for every five hours of client contact in  
33 each setting.

34 (2) Each individual supervised after being granted a qualifying  
35 degree shall receive an average of at least one hour of direct  
36 supervisor contact for every 10 hours of client contact in each  
37 setting in which experience is gained.

38 (3) For purposes of this section, "one hour of direct supervisor  
39 contact" means one hour of face-to-face contact on an individual

1 basis or two hours of face-to-face contact in a group of not more  
2 than eight persons.

3 (4) All experience gained by a trainee shall be monitored by the  
4 supervisor as specified by regulation. The 5-to-1 and 10-to-1 ratios  
5 specified in this subdivision shall be applicable to all hours gained  
6 on or after January 1, 1995.

7 (d) (1) A trainee may be credited with supervised experience  
8 completed in any setting that meets all of the following:

9 (A) Lawfully and regularly provides mental health counseling  
10 or psychotherapy.

11 (B) Provides oversight to ensure that the trainee's work at the  
12 setting meets the experience and supervision requirements set forth  
13 in this chapter and is within the scope of practice for the profession  
14 as defined in Section 4980.02.

15 (C) Is not a private practice owned by a licensed marriage and  
16 family therapist, a licensed psychologist, a licensed clinical social  
17 worker, a licensed physician and surgeon, or a professional  
18 corporation of any of those licensed professions.

19 (2) Experience may be gained by the trainee solely as part of  
20 the position for which the trainee volunteers or is employed.

21 (e) (1) An intern may be credited with supervised experience  
22 completed in any setting that meets both of the following:

23 (A) Lawfully and regularly provides mental health counseling  
24 or psychotherapy.

25 (B) Provides oversight to ensure that the intern's work at the  
26 setting meets the experience and supervision requirements set forth  
27 in this chapter and is within the scope of practice for the profession  
28 as defined in Section 4980.02.

29 (2) An applicant shall not be employed or volunteer in a private  
30 practice, as defined in subparagraph (C) of paragraph (1) of  
31 subdivision (d), until registered as an intern.

32 (3) While an intern may be either a paid employee or a  
33 volunteer, employers are encouraged to provide fair remuneration  
34 to interns.

35 (4) Except for periods of time during a supervisor's vacation or  
36 sick leave, an intern who is employed or volunteering in private  
37 practice shall be under the direct supervision of a licensee that has  
38 satisfied the requirements of subdivision (g) of Section 4980.03.

39 The supervising licensee shall either be employed by and practice  
40 at the same site as the intern's employer, or shall be an owner or

1 shareholder of the private practice. Alternative supervision may  
2 be arranged during a supervisor's vacation or sick leave if the  
3 supervision meets the requirements of this section.

4 (5) Experience may be gained by the intern solely as part of the  
5 position for which the intern volunteers or is employed.

6 (f) Except as provided in subdivision (g), all persons shall  
7 register with the board as an intern in order to be credited for  
8 postdegree hours of supervised experience gained toward licensure.

9 (g) Except when employed in a private practice setting, all  
10 postdegree hours of experience shall be credited toward licensure  
11 so long as the applicant applies for the intern registration within  
12 90 days of the granting of the qualifying master's or doctor's  
13 degree and is thereafter granted the intern registration by the board.

14 (h) Trainees, interns, and applicants shall not receive any  
15 remuneration from patients or clients, and shall only be paid by  
16 their employers.

17 (i) Trainees, interns, and applicants shall only perform services  
18 at the place where their employers regularly conduct business,  
19 which may include performing services at other locations, so long  
20 as the services are performed under the direction and control of  
21 their employer and supervisor, and in compliance with the laws  
22 and regulations pertaining to supervision. Trainees and interns  
23 shall have no proprietary interest in their employers' businesses  
24 and shall not lease or rent space, pay for furnishings, equipment  
25 or supplies, or in any other way pay for the obligations of their  
26 employers.

27 (j) Trainees, interns, or applicants who provide volunteered  
28 services or other services, and who receive no more than a total,  
29 from all work settings, of five hundred dollars (\$500) per month  
30 as reimbursement for expenses actually incurred by those trainees,  
31 interns, or applicants for services rendered in any lawful work  
32 setting other than a private practice shall be considered an  
33 employee and not an independent contractor. The board may audit  
34 applicants who receive reimbursement for expenses, and the  
35 applicants shall have the burden of demonstrating that the payments  
36 received were for reimbursement of expenses actually incurred.

37 (k) Each educational institution preparing applicants for  
38 licensure pursuant to this chapter shall consider requiring, and  
39 shall encourage, its students to undergo individual, marital or  
40 conjoint, family, or group counseling or psychotherapy, as

1 appropriate. Each supervisor shall consider, advise, and encourage  
2 his or her interns and trainees regarding the advisability of  
3 undertaking individual, marital or conjoint, family, or group  
4 counseling or psychotherapy, as appropriate. Insofar as it is deemed  
5 appropriate and is desired by the applicant, the educational  
6 institution and supervisors are encouraged to assist the applicant  
7 in locating that counseling or psychotherapy at a reasonable cost.

8 (I) For purposes of this chapter, “professional enrichment  
9 activities” includes the following:

10 (1) Workshops, seminars, training sessions, or conferences  
11 directly related to marriage and family therapy attended by the  
12 applicant that are approved by the applicant’s supervisor.

13 (2) Participation by the applicant in personal psychotherapy  
14 which includes group, marital or conjoint, family, or individual  
15 psychotherapy by an appropriately licensed professional.

16 ~~SEC. 60.~~

17 *SEC. 64.* Section 4981 of the Business and Professions Code  
18 is repealed.

19 ~~SEC. 61.~~

20 *SEC. 65.* Section 4982 of the Business and Professions Code  
21 is amended to read:

22 4982. The board may deny a license or registration or may  
23 suspend or revoke the license or registration of a licensee or  
24 registrant if he or she has been guilty of unprofessional conduct.  
25 Unprofessional conduct includes, but is not limited to, the  
26 following:

27 (a) The conviction of a crime substantially related to the  
28 qualifications, functions, or duties of a licensee or registrant under  
29 this chapter. The record of conviction shall be conclusive evidence  
30 only of the fact that the conviction occurred. The board may inquire  
31 into the circumstances surrounding the commission of the crime  
32 in order to fix the degree of discipline or to determine if the  
33 conviction is substantially related to the qualifications, functions,  
34 or duties of a licensee or registrant under this chapter. A plea or  
35 verdict of guilty or a conviction following a plea of nolo contendere  
36 made to a charge substantially related to the qualifications,  
37 functions, or duties of a licensee or registrant under this chapter  
38 shall be deemed to be a conviction within the meaning of this  
39 section. The board may order any license or registration suspended  
40 or revoked, or may decline to issue a license or registration when

1 the time for appeal has elapsed, or the judgment of conviction has  
2 been affirmed on appeal, or, when an order granting probation is  
3 made suspending the imposition of sentence, irrespective of a  
4 subsequent order under Section 1203.4 of the Penal Code allowing  
5 the person to withdraw a plea of guilty and enter a plea of not  
6 guilty, or setting aside the verdict of guilty, or dismissing the  
7 accusation, information, or indictment.

8 (b) Securing a license or registration by fraud, deceit, or  
9 misrepresentation on any application for licensure or registration  
10 submitted to the board, whether engaged in by an applicant for a  
11 license or registration, or by a licensee in support of any application  
12 for licensure or registration.

13 (c) Administering to himself or herself any controlled substance  
14 or using of any of the dangerous drugs specified in Section 4022,  
15 or of any alcoholic beverage to the extent, or in a manner, as to be  
16 dangerous or injurious to the person applying for a registration or  
17 license or holding a registration or license under this chapter, or  
18 to any other person, or to the public, or, to the extent that the use  
19 impairs the ability of the person applying for or holding a  
20 registration or license to conduct with safety to the public the  
21 practice authorized by the registration or license. *The board shall*  
22 *deny an application for a registration or license or revoke the*  
23 *license or registration of any person, other than one who is licensed*  
24 *as a physician and surgeon, who uses or offers to use drugs in the*  
25 *course of performing marriage and family therapy services.*

26 (d) Gross negligence or incompetence in the performance of  
27 marriage and family therapy.

28 (e) Violating, attempting to violate, or conspiring to violate any  
29 of the provisions of this chapter or any regulation adopted by the  
30 board.

31 (f) Misrepresentation as to the type or status of a license or  
32 registration held by the person, or otherwise misrepresenting or  
33 permitting misrepresentation of his or her education, professional  
34 qualifications, or professional affiliations to any person or entity.

35 (g) Impersonation of another by any licensee, registrant, or  
36 applicant for a license or registration, or, in the case of a licensee,  
37 allowing any other person to use his or her license or registration.

38 (h) Aiding or abetting, or employing, directly or indirectly, any  
39 unlicensed or unregistered person to engage in conduct for which  
40 a license or registration is required under this chapter.



1 (i) Intentionally or recklessly causing physical or emotional  
2 harm to any client.

3 (j) The commission of any dishonest, corrupt, or fraudulent act  
4 substantially related to the qualifications, functions, or duties of a  
5 licensee or registrant.

6 (k) Engaging in sexual relations with a client, or a former client  
7 within two years following termination of therapy, soliciting sexual  
8 relations with a client, or committing an act of sexual abuse, or  
9 sexual misconduct with a client, or committing an act punishable  
10 as a sexually related crime, if that act or solicitation is substantially  
11 related to the qualifications, functions, or duties of a marriage and  
12 family therapist.

13 (l) Performing, or holding oneself out as being able to perform,  
14 or offering to perform, or permitting any trainee or registered intern  
15 under supervision to perform, any professional services beyond  
16 the scope of the license authorized by this chapter.

17 (m) Failure to maintain confidentiality, except as otherwise  
18 required or permitted by law, of all information that has been  
19 received from a client in confidence during the course of treatment  
20 and all information about the client that is obtained from tests or  
21 other means.

22 (n) Prior to the commencement of treatment, failing to disclose  
23 to the client or prospective client the fee to be charged for the  
24 professional services, or the basis upon which that fee will be  
25 computed.

26 (o) Paying, accepting, or soliciting any consideration,  
27 compensation, or remuneration, whether monetary or otherwise,  
28 for the referral of professional clients. All consideration,  
29 compensation, or remuneration shall be in relation to professional  
30 counseling services actually provided by the licensee. Nothing in  
31 this subdivision shall prevent collaboration among two or more  
32 licensees in a case or cases. However, no fee shall be charged for  
33 that collaboration, except when disclosure of the fee has been made  
34 in compliance with subdivision (n).

35 (p) Advertising in a manner that is false, misleading, or  
36 deceptive.

37 (q) Reproduction or description in public, or in any publication  
38 subject to general public distribution, of any psychological test or  
39 other assessment device, the value of which depends in whole or

1 in part on the naivete of the subject, in ways that might invalidate  
2 the test or device.

3 (r) Any conduct in the supervision of any registered intern or  
4 trainee by any licensee that violates this chapter or any rules or  
5 regulations adopted by the board.

6 (s) Performing or holding oneself out as being able to perform  
7 professional services beyond the scope of one's competence, as  
8 established by one's education, training, or experience. This  
9 subdivision shall not be construed to expand the scope of the  
10 license authorized by this chapter.

11 (t) Permitting a trainee or registered intern under one's  
12 supervision or control to perform, or permitting the trainee or  
13 registered intern to hold himself or herself out as competent to  
14 perform, professional services beyond the trainee's or registered  
15 intern's level of education, training, or experience.

16 (u) The violation of any statute or regulation governing the  
17 gaining and supervision of experience required by this chapter.

18 (v) Failure to keep records consistent with sound clinical  
19 judgment, the standards of the profession, and the nature of the  
20 services being rendered.

21 (w) Failure to comply with the child abuse reporting  
22 requirements of Section 11166 of the Penal Code.

23 (x) Failure to comply with the elder and dependent adult abuse  
24 reporting requirements of Section 15630 of the Welfare and  
25 Institutions Code.

26 (y) Willful violation of Chapter 1 (commencing with Section  
27 123100) of Part 1 of Division 106 of the Health and Safety Code.

28 (z) Failure to comply with Section 2290.5.

29 (aa) Engaging in any conduct that subverts or attempts to subvert  
30 any licensing examination or the administration of an examination  
31 as described in Section 123.

32 ~~SEC. 62.~~

33 *SEC. 66.* Section 4989.54 of the Business and Professions Code  
34 is amended to read:

35 4989.54. The board may deny a license or may suspend or  
36 revoke the license of a licensee if he or she has been guilty of  
37 unprofessional conduct. Unprofessional conduct includes, but is  
38 not limited to, the following:

39 (a) Conviction of a crime substantially related to the  
40 qualifications, functions and duties of an educational psychologist.

1 (1) The record of conviction shall be conclusive evidence only  
2 of the fact that the conviction occurred.

3 (2) The board may inquire into the circumstances surrounding  
4 the commission of the crime in order to fix the degree of discipline  
5 or to determine if the conviction is substantially related to the  
6 qualifications, functions, or duties of a licensee under this chapter.

7 (3) A plea or verdict of guilty or a conviction following a plea  
8 of nolo contendere made to a charge substantially related to the  
9 qualifications, functions, or duties of a licensee under this chapter  
10 shall be deemed to be a conviction within the meaning of this  
11 section.

12 (4) The board may order a license suspended or revoked, or  
13 may decline to issue a license when the time for appeal has elapsed,  
14 or the judgment of conviction has been affirmed on appeal, or  
15 when an order granting probation is made suspending the  
16 imposition of sentence, irrespective of a subsequent order under  
17 Section 1203.4 of the Penal Code allowing the person to withdraw  
18 a plea of guilty and enter a plea of not guilty or setting aside the  
19 verdict of guilty or dismissing the accusation, information, or  
20 indictment.

21 (b) Securing a license by fraud, deceit, or misrepresentation on  
22 an application for licensure submitted to the board, whether  
23 engaged in by an applicant for a license or by a licensee in support  
24 of an application for licensure.

25 (c) Administering to himself or herself a controlled substance  
26 or using any of the dangerous drugs specified in Section 4022 or  
27 an alcoholic beverage to the extent, or in a manner, as to be  
28 dangerous or injurious to himself or herself or to any other person  
29 or to the public or to the extent that the use impairs his or her ability  
30 to safely perform the functions authorized by the license. *The board*  
31 *shall deny an application for a license or revoke the license of any*  
32 *person, other than one who is licensed as a physician and surgeon,*  
33 *who uses or offers to use drugs in the course of performing*  
34 *educational psychology.*

35 (d) Advertising in a manner that is false, misleading, or  
36 deceptive.

37 (e) Violating, attempting to violate, or conspiring to violate any  
38 of the provisions of this chapter or any regulation adopted by the  
39 board.

1 (f) Commission of any dishonest, corrupt, or fraudulent act  
2 substantially related to the qualifications, functions, or duties of a  
3 licensee.

4 (g) Denial of licensure, revocation, suspension, restriction, or  
5 any other disciplinary action imposed by another state or territory  
6 or possession of the United States or by any other governmental  
7 agency, on a license, certificate, or registration to practice  
8 educational psychology or any other healing art. A certified copy  
9 of the disciplinary action, decision, or judgment shall be conclusive  
10 evidence of that action.

11 (h) Revocation, suspension, or restriction by the board of a  
12 license, certificate, or registration to practice as a clinical social  
13 worker or marriage and family therapist.

14 (i) Failure to keep records consistent with sound clinical  
15 judgment, the standards of the profession, and the nature of the  
16 services being rendered.

17 (j) Gross negligence or incompetence in the practice of  
18 educational psychology.

19 (k) Misrepresentation as to the type or status of a license held  
20 by the licensee or otherwise misrepresenting or permitting  
21 misrepresentation of his or her education, professional  
22 qualifications, or professional affiliations to any person or entity.

23 (l) Intentionally or recklessly causing physical or emotional  
24 harm to any client.

25 (m) Engaging in sexual relations with a client or a former client  
26 within two years following termination of professional services,  
27 soliciting sexual relations with a client, or committing an act of  
28 sexual abuse or sexual misconduct with a client or committing an  
29 act punishable as a sexually related crime, if that act or solicitation  
30 is substantially related to the qualifications, functions, or duties of  
31 a licensed educational psychologist.

32 (n) Prior to the commencement of treatment, failing to disclose  
33 to the client or prospective client the fee to be charged for the  
34 professional services or the basis upon which that fee will be  
35 computed.

36 (o) Paying, accepting, or soliciting any consideration,  
37 compensation, or remuneration, whether monetary or otherwise,  
38 for the referral of professional clients.

39 (p) Failing to maintain confidentiality, except as otherwise  
40 required or permitted by law, of all information that has been

1 received from a client in confidence during the course of treatment  
2 and all information about the client that is obtained from tests or  
3 other means.

4 (q) Performing, holding himself or herself out as being able to  
5 perform, or offering to perform any professional services beyond  
6 the scope of the license authorized by this chapter or beyond his  
7 or her field or fields of competence as established by his or her  
8 education, training, or experience.

9 (r) Reproducing or describing in public, or in any publication  
10 subject to general public distribution, any psychological test or  
11 other assessment device the value of which depends in whole or  
12 in part on the naivete of the subject in ways that might invalidate  
13 the test or device. An educational psychologist shall limit access  
14 to the test or device to persons with professional interests who can  
15 be expected to safeguard its use.

16 (s) Aiding or abetting an unlicensed person to engage in conduct  
17 requiring a license under this chapter.

18 (t) When employed by another person or agency, encouraging,  
19 either orally or in writing, the employer's or agency's clientele to  
20 utilize his or her private practice for further counseling without  
21 the approval of the employing agency or administration.

22 (u) Failing to comply with the child abuse reporting  
23 requirements of Section 11166 of the Penal Code.

24 (v) Failing to comply with the elder and adult dependent abuse  
25 reporting requirements of Section 15630 of the Welfare and  
26 Institutions Code.

27 (w) Willful violation of Chapter 1 (commencing with Section  
28 123100) of Part 1 of Division 106 of the Health and Safety Code.

29 (x) Failure to comply with Section 2290.5.

30 (y) Engaging in any conduct that subverts or attempts to subvert  
31 any licensing examination or the administration of an examination  
32 as described in Section 123.

33 ~~SEC. 63.~~

34 *SEC. 67.* Section 4990.09 is added to the Business and  
35 Professions Code, to read:

36 4990.09. The board shall not publish on the Internet the final  
37 determination of a citation and fine of one thousand five hundred  
38 dollars (\$1,500) or less issued against a licensee or registrant  
39 pursuant to Section 125.9 for a period of time in excess of five  
40 years from the date of issuance of the citation.

1     ~~SEC. 64.~~

2     SEC. 68. Section 4992.3 of the Business and Professions Code  
3 is amended to read:

4     4992.3. The board may deny a license or a registration, or may  
5 suspend or revoke the license or registration of a licensee or  
6 registrant if he or she has been guilty of unprofessional conduct.  
7 Unprofessional conduct includes, but is not limited to, the  
8 following:

9     (a) The conviction of a crime substantially related to the  
10 qualifications, functions, or duties of a licensee or registrant under  
11 this chapter. The record of conviction shall be conclusive evidence  
12 only of the fact that the conviction occurred. The board may inquire  
13 into the circumstances surrounding the commission of the crime  
14 in order to fix the degree of discipline or to determine if the  
15 conviction is substantially related to the qualifications, functions,  
16 or duties of a licensee or registrant under this chapter. A plea or  
17 verdict of guilty or a conviction following a plea of nolo contendere  
18 made to a charge substantially related to the qualifications,  
19 functions, or duties of a licensee or registrant under this chapter  
20 is a conviction within the meaning of this section. The board may  
21 order any license or registration suspended or revoked, or may  
22 decline to issue a license or registration when the time for appeal  
23 has elapsed, or the judgment of conviction has been affirmed on  
24 appeal, or, when an order granting probation is made suspending  
25 the imposition of sentence, irrespective of a subsequent order under  
26 Section 1203.4 of the Penal Code allowing the person to withdraw  
27 a plea of guilty and enter a plea of not guilty, or setting aside the  
28 verdict of guilty, or dismissing the accusation, information, or  
29 indictment.

30     (b) Securing a license or registration by fraud, deceit, or  
31 misrepresentation on any application for licensure or registration  
32 submitted to the board, whether engaged in by an applicant for a  
33 license or registration, or by a licensee in support of any application  
34 for licensure or registration.

35     (c) Administering to himself or herself any controlled substance  
36 or using any of the dangerous drugs specified in Section 4022 or  
37 any alcoholic beverage to the extent, or in a manner, as to be  
38 dangerous or injurious to the person applying for a registration or  
39 license or holding a registration or license under this chapter, or  
40 to any other person, or to the public, or, to the extent that the use

1 impairs the ability of the person applying for or holding a  
2 registration or license to conduct with safety to the public the  
3 practice authorized by the registration or license. *The board shall*  
4 *deny an application for a registration or license or revoke the*  
5 *license or registration of any person who uses or offers to use*  
6 *drugs in the course of performing clinical social work. This*  
7 *provision does not apply to any person also licensed as a physician*  
8 *and surgeon under Chapter 5 (commencing with Section 2000) or*  
9 *the Osteopathic Act who lawfully prescribes drugs to a patient*  
10 *under his or her care.*

11 (d) Gross negligence or incompetence in the performance of  
12 clinical social work.

13 (e) Violating, attempting to violate, or conspiring to violate this  
14 chapter or any regulation adopted by the board.

15 (f) Misrepresentation as to the type or status of a license or  
16 registration held by the person, or otherwise misrepresenting or  
17 permitting misrepresentation of his or her education, professional  
18 qualifications, or professional affiliations to any person or entity.  
19 For purposes of this subdivision, this misrepresentation includes,  
20 but is not limited to, misrepresentation of the person's  
21 qualifications as an adoption service provider pursuant to Section  
22 8502 of the Family Code.

23 (g) Impersonation of another by any licensee, registrant, or  
24 applicant for a license or registration, or, in the case of a licensee,  
25 allowing any other person to use his or her license or registration.

26 (h) Aiding or abetting any unlicensed or unregistered person to  
27 engage in conduct for which a license or registration is required  
28 under this chapter.

29 (i) Intentionally or recklessly causing physical or emotional  
30 harm to any client.

31 (j) The commission of any dishonest, corrupt, or fraudulent act  
32 substantially related to the qualifications, functions, or duties of a  
33 licensee or registrant.

34 (k) Engaging in sexual relations with a client or with a former  
35 client within two years from the termination date of therapy with  
36 the client, soliciting sexual relations with a client, or committing  
37 an act of sexual abuse, or sexual misconduct with a client, or  
38 committing an act punishable as a sexually related crime, if that  
39 act or solicitation is substantially related to the qualifications,  
40 functions, or duties of a clinical social worker.

1 (l) Performing, or holding one's self out as being able to  
2 perform, or offering to perform or permitting, any registered  
3 associate clinical social worker or intern under supervision to  
4 perform any professional services beyond the scope of the license  
5 authorized by this chapter.

6 (m) Failure to maintain confidentiality, except as otherwise  
7 required or permitted by law, of all information that has been  
8 received from a client in confidence during the course of treatment  
9 and all information about the client that is obtained from tests or  
10 other means.

11 (n) Prior to the commencement of treatment, failing to disclose  
12 to the client or prospective client the fee to be charged for the  
13 professional services, or the basis upon which that fee will be  
14 computed.

15 (o) Paying, accepting, or soliciting any consideration,  
16 compensation, or remuneration, whether monetary or otherwise,  
17 for the referral of professional clients. All consideration,  
18 compensation, or remuneration shall be in relation to professional  
19 counseling services actually provided by the licensee. Nothing in  
20 this subdivision shall prevent collaboration among two or more  
21 licensees in a case or cases. However, no fee shall be charged for  
22 that collaboration, except when disclosure of the fee has been made  
23 in compliance with subdivision (n).

24 (p) Advertising in a manner that is false, misleading, or  
25 deceptive.

26 (q) Reproduction or description in public, or in any publication  
27 subject to general public distribution, of any psychological test or  
28 other assessment device, the value of which depends in whole or  
29 in part on the naivete of the subject, in ways that might invalidate  
30 the test or device.

31 (r) Any conduct in the supervision of any registered associate  
32 clinical social worker or intern by any licensee that violates this  
33 chapter or any rules or regulations adopted by the board.

34 (s) Failure to keep records consistent with sound clinical  
35 judgment, the standards of the profession, and the nature of the  
36 services being rendered.

37 (t) Failure to comply with the child abuse reporting requirements  
38 of Section 11166 of the Penal Code.



1 (u) Failure to comply with the elder and dependent adult abuse  
2 reporting requirements of Section 15630 of the Welfare and  
3 Institutions Code.

4 (v) Willful violation of Chapter 1 (commencing with Section  
5 123100) of Part 1 of Division 106 of the Health and Safety Code.

6 (w) Failure to comply with Section 2290.5.

7 (x) Engaging in any conduct that subverts or attempts to subvert  
8 any licensing examination or the administration of an examination  
9 as described in Section 123.

10 ~~SEC. 65.~~

11 *SEC. 69.* Section 4994.1 of the Business and Professions Code  
12 is repealed.

13 ~~SEC. 66.~~

14 *SEC. 70.* Section 4996.2 of the Business and Professions Code  
15 is amended to read:

16 4996.2. Each applicant shall furnish evidence satisfactory to  
17 the board that he or she complies with all of the following  
18 requirements:

19 (a) Is at least 21 years of age.

20 (b) Has received a master's degree from an accredited school  
21 of social work.

22 (c) Has had two years of supervised post-master's degree  
23 experience, as specified in Section 4996.23.

24 (d) Has not committed any crimes or acts constituting grounds  
25 for denial of licensure under Section 480. The board shall not issue  
26 a registration or license to any person who has been convicted of  
27 any crime in this or another state or in a territory of the United  
28 States that involves sexual abuse of children or who is required to  
29 register pursuant to Section 290 of the Penal Code or the equivalent  
30 in another state or territory.

31 (e) Has completed adequate instruction and training in the  
32 subject of alcoholism and other chemical substance dependency.  
33 This requirement applies only to applicants who matriculate on or  
34 after January 1, 1986.

35 (f) Has completed instruction and training in spousal or partner  
36 abuse assessment, detection, and intervention. This requirement  
37 applies to an applicant who began graduate training during the  
38 period commencing on January 1, 1995, and ending on December  
39 31, 2003. An applicant who began graduate training on or after  
40 January 1, 2004, shall complete a minimum of 15 contact hours

1 of coursework in spousal or partner abuse assessment, detection,  
2 and intervention strategies, including knowledge of community  
3 resources, cultural factors, and same gender abuse dynamics.  
4 Coursework required under this subdivision may be satisfactory  
5 if taken either in fulfillment of other educational requirements for  
6 licensure or in a separate course. This requirement for coursework  
7 shall be satisfied by, and the board shall accept in satisfaction of  
8 the requirement, a certification from the chief academic officer of  
9 the educational institution from which the applicant graduated that  
10 the required coursework is included within the institution's required  
11 curriculum for graduation.

12 (g) Has completed a minimum of 10 contact hours of training  
13 or coursework in human sexuality as specified in Section 1807 of  
14 Title 16 of the California Code of Regulations. This training or  
15 coursework may be satisfactory if taken either in fulfillment of  
16 other educational requirements for licensure or in a separate course.

17 (h) Has completed a minimum of seven contact hours of training  
18 or coursework in child abuse assessment and reporting as specified  
19 in Section 1807.2 of Title 16 of the California Code of Regulations.  
20 This training or coursework may be satisfactory if taken either in  
21 fulfillment of other educational requirements for licensure or in a  
22 separate course.

23 ~~SEC. 67.~~

24 *SEC. 71.* Section 4996.17 of the Business and Professions Code  
25 is amended to read:

26 4996.17. (a) Experience gained outside of California shall be  
27 accepted toward the licensure requirements if it is substantially  
28 the equivalent of the requirements of this chapter.

29 (b) The board may issue a license to any person who, at the time  
30 of application, holds a valid active clinical social work license  
31 issued by a board of clinical social work examiners or  
32 corresponding authority of any state, if the person passes the board  
33 administered licensing examinations as specified in Section 4996.1  
34 and pays the required fees. Issuance of the license is conditioned  
35 upon all of the following:

36 (1) The applicant has supervised experience that is substantially  
37 the equivalent of that required by this chapter. If the applicant has  
38 less than 3,200 hours of qualifying supervised experience, time  
39 actively licensed as a clinical social worker shall be accepted at a  
40 rate of 100 hours per month up to a maximum of 1,200 hours.

1 (2) Completion of the following coursework or training in or  
2 out of this state:

3 (A) A minimum of seven contact hours of training or coursework  
4 in child abuse assessment and reporting as specified in Section 28,  
5 and any regulations promulgated thereunder.

6 (B) A minimum of 10 contact hours of training or coursework  
7 in human sexuality as specified in Section 25, and any regulations  
8 promulgated thereunder.

9 (C) A minimum of 15 contact hours of training or coursework  
10 in alcoholism and other chemical substance dependency, as  
11 specified by regulation.

12 (D) A minimum of 15 contact hours of coursework or training  
13 in spousal or partner abuse assessment, detection, and intervention  
14 strategies.

15 (3) The applicant's license is not suspended, revoked, restricted,  
16 sanctioned, or voluntarily surrendered in any state.

17 (4) The applicant is not currently under investigation in any  
18 other state, and has not been charged with an offense for any act  
19 substantially related to the practice of social work by any public  
20 agency, entered into any consent agreement or been subject to an  
21 administrative decision that contains conditions placed by an  
22 agency upon an applicant's professional conduct or practice,  
23 including any voluntary surrender of license, or been the subject  
24 of an adverse judgment resulting from the practice of social work  
25 that the board determines constitutes evidence of a pattern of  
26 incompetence or negligence.

27 (5) The applicant shall provide a certification from each state  
28 where he or she holds a license pertaining to licensure, disciplinary  
29 action, and complaints pending.

30 (6) The applicant is not subject to denial of licensure under  
31 Section 480, 4992.3, 4992.35, or 4992.36.

32 (c) The board may issue a license to any person who, at the time  
33 of application, has held a valid, active clinical social work license  
34 for a minimum of four years, issued by a board of clinical social  
35 work examiners or a corresponding authority of any state, if the  
36 person passes the board administered licensing examinations as  
37 specified in Section 4996.1 and pays the required fees. Issuance  
38 of the license is conditioned upon all of the following:

39 (1) Completion of the following coursework or training in or  
40 out of state:

1 (A) A minimum of seven contact hours of training or coursework  
2 in child abuse assessment and reporting as specified in Section 28,  
3 and any regulations promulgated thereunder.

4 (B) A minimum of 10 contact hours of training or coursework  
5 in human sexuality as specified in Section 25, and any regulations  
6 promulgated thereunder.

7 (C) A minimum of 15 contact hours of training or coursework  
8 in alcoholism and other chemical substance dependency, as  
9 specified by regulation.

10 (D) A minimum of 15 contact hours of coursework or training  
11 in spousal or partner abuse assessment, detection, and intervention  
12 strategies.

13 (2) The applicant has been licensed as a clinical social worker  
14 continuously for a minimum of four years prior to the date of  
15 application.

16 (3) The applicant's license is not suspended, revoked, restricted,  
17 sanctioned, or voluntarily surrendered in any state.

18 (4) The applicant is not currently under investigation in any  
19 other state, and has not been charged with an offense for any act  
20 substantially related to the practice of social work by any public  
21 agency, entered into any consent agreement or been subject to an  
22 administrative decision that contains conditions placed by an  
23 agency upon an applicant's professional conduct or practice,  
24 including any voluntary surrender of license, or been the subject  
25 of an adverse judgment resulting from the practice of social work  
26 that the board determines constitutes evidence of a pattern of  
27 incompetence or negligence.

28 (5) The applicant provides a certification from each state where  
29 he or she holds a license pertaining to licensure, disciplinary action,  
30 and complaints pending.

31 (6) The applicant is not subject to denial of licensure under  
32 Section 480, 4992.3, 4992.35, or 4992.36.

33 ~~SEC. 68.~~

34 *SEC. 72.* Section 4996.18 of the Business and Professions Code  
35 is amended to read:

36 4996.18. (a) A person who wishes to be credited with  
37 experience toward licensure requirements shall register with the  
38 board as an associate clinical social worker prior to obtaining that  
39 experience. The application shall be made on a form prescribed  
40 by the board.

1 (b) An applicant for registration shall satisfy the following  
2 requirements:

3 (1) Possess a master's degree from an accredited school or  
4 department of social work.

5 (2) Have committed no crimes or acts constituting grounds for  
6 denial of licensure under Section 480.

7 (c) An applicant who possesses a master's degree from a school  
8 or department of social work that is a candidate for accreditation  
9 by the Commission on Accreditation of the Council on Social  
10 Work Education shall be eligible, and shall be required, to register  
11 as an associate clinical social worker in order to gain experience  
12 toward licensure if the applicant has not committed any crimes or  
13 acts that constitute grounds for denial of licensure under Section  
14 480. That applicant shall not, however, be eligible for examination  
15 until the school or department of social work has received  
16 accreditation by the Commission on Accreditation of the Council  
17 on Social Work Education.

18 (d) Any experience obtained under the supervision of a spouse  
19 or relative by blood or marriage shall not be credited toward the  
20 required hours of supervised experience. Any experience obtained  
21 under the supervision of a supervisor with whom the applicant has  
22 a personal relationship that undermines the authority or  
23 effectiveness of the supervision shall not be credited toward the  
24 required hours of supervised experience.

25 (e) An applicant who possesses a master's degree from an  
26 accredited school or department of social work shall be able to  
27 apply experience the applicant obtained during the time the  
28 accredited school or department was in candidacy status by the  
29 Commission on Accreditation of the Council on Social Work  
30 Education toward the licensure requirements, if the experience  
31 meets the requirements of Section 4996.23. This subdivision shall  
32 apply retroactively to persons who possess a master's degree from  
33 an accredited school or department of social work and who  
34 obtained experience during the time the accredited school or  
35 department was in candidacy status by the Commission on  
36 Accreditation of the Council on Social Work Education.

37 (f) An applicant for registration or licensure trained in an  
38 educational institution outside the United States shall demonstrate  
39 to the satisfaction of the board that he or she possesses a master's  
40 of social work degree that is equivalent to a master's degree issued

1 from a school or department of social work that is accredited by  
2 the Commission on Accreditation of the Council on Social Work  
3 Education. These applicants shall provide the board with a  
4 comprehensive evaluation of the degree and shall provide any  
5 other documentation the board deems necessary. The board has  
6 the authority to make the final determination as to whether a degree  
7 meets all requirements, including, but not limited to, course  
8 requirements regardless of evaluation or accreditation.

9 (g) A registrant shall not provide clinical social work services  
10 to the public for a fee, monetary or otherwise, except as an  
11 employee.

12 (h) A registrant shall inform each client or patient prior to  
13 performing any professional services that he or she is unlicensed  
14 and is under the supervision of a licensed professional.

15 ~~SEC. 69.~~

16 ~~SEC. 73.~~ Section 4996.20 of the Business and Professions Code  
17 is repealed.

18 ~~SEC. 70.~~

19 ~~SEC. 74.~~ Section 4996.21 of the Business and Professions Code  
20 is repealed.

21 ~~SEC. 71.~~

22 ~~SEC. 75.~~ Section 4996.23 of the Business and Professions Code  
23 is amended to read:

24 4996.23. The experience required by subdivision (c) of Section  
25 4996.2 shall meet the following criteria:

26 (a) All persons registered with the board on and after January  
27 1, 2002, shall have at least 3,200 hours of post-master's degree  
28 supervised experience providing clinical social work services as  
29 permitted by Section 4996.9. At least 1,700 hours shall be gained  
30 under the supervision of a licensed clinical social worker. The  
31 remaining required supervised experience may be gained under  
32 the supervision of a licensed mental health professional acceptable  
33 to the board as defined by a regulation adopted by the board. This  
34 experience shall consist of the following:

35 (1) A minimum of 2,000 hours in clinical psychosocial  
36 diagnosis, assessment, and treatment, including psychotherapy or  
37 counseling.

38 (2) A maximum of 1,200 hours in client-centered advocacy,  
39 consultation, evaluation, and research.

1 (3) Of the 2,000 clinical hours required in paragraph (1), no less  
2 than 750 hours shall be face-to-face individual or group  
3 psychotherapy provided to clients in the context of clinical social  
4 work services.

5 (4) A minimum of two years of supervised experience is required  
6 to be obtained over a period of not less than 104 weeks and shall  
7 have been gained within the six years immediately preceding the  
8 date on which the application for licensure was filed.

9 (5) Experience shall not be credited for more than 40 hours in  
10 any week.

11 (b) "Supervision" means responsibility for, and control of, the  
12 quality of clinical social work services being provided.  
13 Consultation or peer discussion shall not be considered to be  
14 supervision.

15 (c) (1) Prior to the commencement of supervision, a supervisor  
16 shall comply with all requirements enumerated in Section 1870 of  
17 Title 16 of the California Code of Regulations and shall sign under  
18 penalty of perjury the "Responsibility Statement for Supervisors  
19 of an Associate Clinical Social Worker" form.

20 (2) Supervised experience shall include at least one hour of  
21 direct supervisor contact for a minimum of 104 weeks.

22 (3) For purposes of this section, "one hour of direct supervisor  
23 contact" means one hour per week of face-to-face contact on an  
24 individual basis or two hours of face-to-face contact in a group  
25 conducted within the same week as the hours claimed.

26 (4) An associate shall receive an average of at least one hour of  
27 direct supervisor contact for every week in which more than 10  
28 hours of face-to-face psychotherapy is performed in each setting  
29 in which experience is gained. No more than five hours of  
30 supervision, whether individual or group, shall be credited during  
31 any single week.

32 (5) Group supervision shall be provided in a group of not more  
33 than eight supervisees and shall be provided in segments lasting  
34 no less than one continuous hour.

35 (6) An associate clinical social worker working in a  
36 governmental entity, a school, college, or university, or an  
37 institution that is both nonprofit and charitable may be credited  
38 with up to 30 hours of direct supervisor contact, via two-way, real  
39 time videoconferencing. The supervisor shall be responsible for  
40 ensuring that client confidentiality is upheld.

1 (7) Of the 104 weeks of required supervision, 52 weeks shall  
2 be individual supervision, and of the 52 weeks of required  
3 individual supervision, not less than 13 weeks shall be supervised  
4 by a licensed clinical social worker.

5 (d) The supervisor and the associate shall develop a supervisory  
6 plan that describes the goals and objectives of supervision. These  
7 goals shall include the ongoing assessment of strengths and  
8 limitations and the assurance of practice in accordance with the  
9 laws and regulations. The associate shall submit to the board the  
10 initial original supervisory plan upon application for licensure.

11 (e) Experience shall only be gained in a setting that meets both  
12 of the following:

13 (1) Lawfully and regularly provides clinical social work, mental  
14 health counseling, or psychotherapy.

15 (2) Provides oversight to ensure that the associate's work at the  
16 setting meets the experience and supervision requirements set forth  
17 in this chapter and is within the scope of practice for the profession  
18 as defined in Section 4996.9.

19 (f) Experience shall not be gained until the applicant has been  
20 registered as an associate clinical social worker.

21 (g) Employment in a private practice as defined in subdivision  
22 (h) shall not commence until the applicant has been registered as  
23 an associate clinical social worker.

24 (h) A private practice setting is a setting that is owned by a  
25 licensed clinical social worker, a licensed marriage and family  
26 therapist, a licensed psychologist, a licensed physician and surgeon,  
27 or a professional corporation of any of those licensed professions.

28 (i) If volunteering, the associate shall provide the board with a  
29 letter from his or her employer verifying his or her voluntary status  
30 upon application for licensure.

31 (j) If employed, the associate shall provide the board with copies  
32 of his or her W-2 tax forms for each year of experience claimed  
33 upon application for licensure.

34 (k) While an associate may be either a paid employee or  
35 volunteer, employers are encouraged to provide fair remuneration  
36 to associates.

37 (l) Associates shall not do the following:

38 (1) Receive any remuneration from patients or clients and shall  
39 only be paid by his or her employer.

40 (2) Have any proprietary interest in the employer's business.



1 (m) An associate, whether employed or volunteering, may obtain  
2 supervision from a person not employed by the associate's  
3 employer if that person has signed a written agreement with the  
4 employer to take supervisory responsibility for the associate's  
5 social work services.

6 (n) Notwithstanding any other provision of law, associates and  
7 applicants for examination shall receive a minimum of one hour  
8 of supervision per week for each setting in which he or she is  
9 working.

10 ~~SEC. 72.~~

11 *SEC. 76.* Section 8659 of the Government Code is amended  
12 to read:

13 8659. Any physician or surgeon (whether licensed in this state  
14 or any other state), hospital, pharmacist, respiratory care  
15 practitioner, nurse, or dentist who renders services during any state  
16 of war emergency, a state of emergency, or a local emergency at  
17 the express or implied request of any responsible state or local  
18 official or agency shall have no liability for any injury sustained  
19 by any person by reason of those services, regardless of how or  
20 under what circumstances or by what cause those injuries are  
21 sustained; provided, however, that the immunity herein granted  
22 shall not apply in the event of a willful act or omission.

23 ~~SEC. 73.~~

24 *SEC. 77.* Section 11150 of the Health and Safety Code is  
25 amended to read:

26 11150. No person other than a physician, dentist, podiatrist,  
27 or veterinarian, or naturopathic doctor acting pursuant to Section  
28 3640.7 of the Business and Professions Code, or pharmacist acting  
29 within the scope of a project authorized under Article 1  
30 (commencing with Section 128125) of Chapter 3 of Part 3 of  
31 Division 107 or within the scope of Section 4052.1 or 4052.2 of  
32 the Business and Professions Code, a registered nurse acting within  
33 the scope of a project authorized under Article 1 (commencing  
34 with Section 128125) of Chapter 3 of Part 3 of Division 107, a  
35 certified nurse-midwife acting within the scope of Section 2746.51  
36 of the Business and Professions Code, a nurse practitioner acting  
37 within the scope of Section 2836.1 of the Business and Professions  
38 Code, a physician assistant acting within the scope of a project  
39 authorized under Article 1 (commencing with Section 128125) of  
40 Chapter 3 of Part 3 of Division 107 or Section 3502.1 of the

1 Business and Professions Code, a naturopathic doctor acting within  
2 the scope of Section 3640.5 of the Business and Professions Code,  
3 or an optometrist acting within the scope of Section 3041 of the  
4 Business and Professions Code, or an out-of-state prescriber acting  
5 pursuant to Section 4005 of the Business and Professions Code  
6 shall write or issue a prescription.

7 ~~SEC. 74.~~

8 SEC. 78. Section 11165 of the Health and Safety Code is  
9 amended to read:

10 11165. (a) To assist law enforcement and regulatory agencies  
11 in their efforts to control the diversion and resultant abuse of  
12 Schedule II, Schedule III, and Schedule IV controlled substances,  
13 and for statistical analysis, education, and research, the Department  
14 of Justice shall, contingent upon the availability of adequate funds  
15 from the Contingent Fund of the Medical Board of California, the  
16 Pharmacy Board Contingent Fund, the State Dentistry Fund, the  
17 Board of Registered Nursing Fund, and the Osteopathic Medical  
18 Board of California Contingent Fund, maintain the Controlled  
19 Substance Utilization Review and Evaluation System (CURES)  
20 for the electronic monitoring of the prescribing and dispensing of  
21 Schedule II, Schedule III, and Schedule IV controlled substances  
22 by all practitioners authorized to prescribe or dispense these  
23 controlled substances.

24 (b) The reporting of Schedule III and Schedule IV controlled  
25 substance prescriptions to CURES shall be contingent upon the  
26 availability of adequate funds from the Department of Justice. The  
27 Department of Justice may seek and use grant funds to pay the  
28 costs incurred from the reporting of controlled substance  
29 prescriptions to CURES. Funds shall not be appropriated from the  
30 Contingent Fund of the Medical Board of California, the Pharmacy  
31 Board Contingent Fund, the State Dentistry Fund, the Board of  
32 Registered Nursing Fund, the Naturopathic Doctor's Fund, or the  
33 Osteopathic Medical Board of California Contingent Fund to pay  
34 the costs of reporting Schedule III and Schedule IV controlled  
35 substance prescriptions to CURES.

36 (c) CURES shall operate under existing provisions of law to  
37 safeguard the privacy and confidentiality of patients. Data obtained  
38 from CURES shall only be provided to appropriate state, local,  
39 and federal persons or public agencies for disciplinary, civil, or  
40 criminal purposes and to other agencies or entities, as determined

1 by the Department of Justice, for the purpose of educating  
2 practitioners and others in lieu of disciplinary, civil, or criminal  
3 actions. Data may be provided to public or private entities, as  
4 approved by the Department of Justice, for educational, peer  
5 review, statistical, or research purposes, provided that patient  
6 information, including any information that may identify the  
7 patient, is not compromised. Further, data disclosed to any  
8 individual or agency as described in this subdivision shall not be  
9 disclosed, sold, or transferred to any third party.

10 (d) For each prescription for a Schedule II, Schedule III, or  
11 Schedule IV controlled substance, the dispensing pharmacy or  
12 clinic shall provide the following information to the Department  
13 of Justice on a weekly basis and in a format specified by the  
14 Department of Justice:

15 (1) Full name, address, and the telephone number of the ultimate  
16 user or research subject, or contact information as determined by  
17 the Secretary of the United States Department of Health and Human  
18 Services, and the gender, and date of birth of the ultimate user.

19 (2) The prescriber's category of licensure and license number;  
20 federal controlled substance registration number; and the state  
21 medical license number of any prescriber using the federal  
22 controlled substance registration number of a government-exempt  
23 facility.

24 (3) Pharmacy prescription number, license number, and federal  
25 controlled substance registration number.

26 (4) NDC (National Drug Code) number of the controlled  
27 substance dispensed.

28 (5) Quantity of the controlled substance dispensed.

29 (6) ICD-9 (diagnosis code), if available.

30 (7) Number of refills ordered.

31 (8) Whether the drug was dispensed as a refill of a prescription  
32 or as a first-time request.

33 (9) Date of origin of the prescription.

34 (10) Date of dispensing of the prescription.

35 (e) This section shall become operative on January 1, 2005.

36 ~~SEC. 75.~~

37 *SEC. 79.* No reimbursement is required by this act pursuant to  
38 Section 6 of Article XIII B of the California Constitution because  
39 the only costs that may be incurred by a local agency or school  
40 district will be incurred because this act creates a new crime or

1   infraction, eliminates a crime or infraction, or changes the penalty  
2   for a crime or infraction, within the meaning of Section 17556 of  
3   the Government Code, or changes the definition of a crime within  
4   the meaning of Section 6 of Article XIII B of the California  
5   Constitution.

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AMENDED IN ASSEMBLY JUNE 16, 2008

AMENDED IN SENATE MARCH 25, 2008

AMENDED IN SENATE MARCH 11, 2008

AMENDED IN SENATE JANUARY 24, 2008

## Senate Joint Resolution

No. 19

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**Introduced by Senator Ridley-Thomas  
(Coauthors: Senators Perata and Romero)**

(Coauthors: Assembly Members Coto, Davis, Dymally, Krekorian,  
Laird, Levine, Portantino, Price, and Soto)

January 7, 2008

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Senate Joint Resolution No. 19—Relative to health professionals.

### LEGISLATIVE COUNSEL'S DIGEST

SJR 19, as amended, Ridley-Thomas. Health professionals: torture.

This measure would request all relevant California agencies to notify California-licensed health professionals about their professional obligations under international law relating to torture and the treatment of detainees, as specified, and to also notify those professionals that those who participate in coercive *or enhanced* interrogation, torture, or other forms of cruel, inhuman, or degrading treatment or punishment may be subject to prosecution. *The measure would request that those health professionals report abusive interrogation practices to the appropriate authorities, as specified.* In addition, the measure would request the United States Department of Defense and the Central Intelligence Agency to remove all California-licensed health professionals from participating in prisoner and detainee interrogations, as specified.

Fiscal committee: yes.

1 WHEREAS, The citizens of the United States and the residents  
2 of the State of California acknowledge January 15th as the birthday  
3 of Dr. Martin Luther King, Jr., and mark the third Monday in  
4 January as a federal and state holiday to commemorate his lifework  
5 as a civil rights leader, an activist, and an internationally acclaimed  
6 proponent of human rights who warned, “He who passively accepts  
7 evil is as much involved in it as he who helps to perpetrate it”; and

8 WHEREAS, Dr. King challenged Americans to remain true to  
9 their most basic values, stating, “The ultimate measure of a man  
10 is not where he stands in moments of comfort and convenience,  
11 but where he stands at times of challenge and controversy”; and

12 WHEREAS, In 2002, for the first time in American history, the  
13 Bush administration initiated a radical new policy allowing the  
14 torture of prisoners of war and other captives with reports from  
15 the International Red Cross, The New England Journal of  
16 Medicine, The Lancet (a British medical journal), military records,  
17 and first-person accounts stating that California-licensed health  
18 professionals have participated in torture or its cover up against  
19 detainees in United States custody; and

20 WHEREAS, In honor of the birthday of Dr. Martin Luther King,  
21 Jr., a broad coalition of medical, human rights, and legal  
22 organizations are petitioning the State of California to warn its  
23 medical licensees of the legal prohibitions against torture and the  
24 risks of prosecution, and are demanding that the United States  
25 government remove California-licensed health professionals from  
26 coercive interrogation and torture of detainees; and

27 WHEREAS, Representatives of Californians to Stop Medical  
28 Torture are carrying petition signatures to the California State  
29 Senate, asking that the Senate warn California-licensed physicians,  
30 psychologists, nurses, and other health care workers of possible  
31 future prosecution for participation in torture — cruel and  
32 degrading practices that have become a national shame; and

33 WHEREAS, Health professionals licensed in California,  
34 including, but not limited to, physicians, osteopaths, naturopaths,  
35 psychologists, psychiatric workers, and nurses, have and continue  
36 to serve nobly and honorably in the armed services of the United  
37 States; and

38 WHEREAS, United States Army regulations and the War Crimes  
39 Act and, relative to the treatment of prisoners of war, Common  
40 Article III of the Geneva Conventions and the Convention against

1 Torture and Other Cruel, Inhuman, or Degrading Treatment or  
2 Punishment (CAT) require that all military personnel report and  
3 not engage in acts of abuse or torture; and

4 WHEREAS, CAT defines the term “torture” as “any act by  
5 which severe pain or suffering, whether physical or mental, is  
6 intentionally inflicted on a person for such purposes as obtaining  
7 from him or a third person information or a confession, punishing  
8 him for an act he or a third person has committed or is suspected  
9 of having committed, or intimidating or coercing him or a third  
10 person, or for any reason based on discrimination of any kind,  
11 when such pain or suffering is inflicted by or at the instigation of  
12 or with the consent or acquiescence of a public official or other  
13 person acting in an official capacity”; and

14 WHEREAS, In 2002, the United States Department of Justice  
15 reinterpreted national and international law related to the treatment  
16 of prisoners of war in a manner that purported to justify  
17 long-prohibited interrogation methods and treatment of detainees;  
18 and

19 WHEREAS, Physicians and other medical personnel and  
20 psychologists serving in noncombat roles are bound by  
21 international law and professional ethics to care for enemy  
22 prisoners and to report any evidence of coercion or abuse of  
23 detainees; and

24 WHEREAS, The World Medical Association (WMA) issued  
25 guidelines stating that physicians shall not use nor allow to be used  
26 their medical knowledge or skills, or health information specific  
27 to individuals, to facilitate or otherwise aid any interrogation, legal  
28 or illegal; and

29 WHEREAS, The guidelines issued by the WMA also state that  
30 physicians shall not participate in or facilitate torture or other forms  
31 of cruel, inhuman, or degrading procedures of prisoners or  
32 detainees in any situation; and

33 WHEREAS, The American Medical Association’s (AMA)  
34 ethical policy prohibits physicians from conducting or directly  
35 participating in an interrogation and from monitoring interrogations  
36 with the intention of intervening; and

37 WHEREAS, AMA policy also states that “[t]orture refers to the  
38 deliberate, systematic or wanton administration of cruel, inhumane  
39 and degrading treatments or punishments during imprisonment or  
40 detainment. Physicians must oppose and must not participate in

1 torture for any reason ... . Physicians should help provide support  
2 for victims of torture and, whenever possible, strive to change the  
3 situation in which torture is practiced or the potential for torture  
4 is great”; and

5 WHEREAS, Section 2340 of Title 18 of the United States Code  
6 defines the term “torture” as an act committed by a person acting  
7 under the color of law specifically intended to inflict severe  
8 physical or mental pain or suffering (other than pain or suffering  
9 incidental to lawful sanctions) upon another person within his  
10 custody or physical control. That section further defines the term  
11 “severe mental pain or suffering” as the prolonged mental harm  
12 caused by or resulting from: (A) the intentional infliction or  
13 threatened infliction of severe physical pain or suffering; (B) the  
14 administration or application, or threatened administration or  
15 application, of mind-altering substances or other procedures  
16 calculated to disrupt profoundly the senses or the personality; (C)  
17 the threat of imminent death; or (D) the threat that another person  
18 will imminently be subjected to death, severe physical pain or  
19 suffering, or the administration or application of mind-altering  
20 substances or other procedures calculated to disrupt profoundly  
21 the senses or personality; and

22 WHEREAS, In May 2006, the American Psychiatric Association  
23 stated that psychiatrists should not “participate directly in the  
24 interrogation of persons held in custody by military or civilian  
25 investigative or law enforcement authorities, whether in the United  
26 States or elsewhere,” and that “psychiatrists should not participate  
27 in, or otherwise assist or facilitate, the commission of torture of  
28 any person. Psychiatrists who become aware that torture has  
29 occurred, is occurring, or has been planned must report it promptly  
30 to a person or persons in a position to take corrective action”; and

31 WHEREAS, In August 2006, the American Psychological  
32 Association stated that “psychologists shall not knowingly  
33 participate in any procedure in which torture or other forms of  
34 cruel, inhuman, or degrading treatment or cruel, inhuman, or  
35 degrading punishment is used or threatened” and that “should  
36 torture or other cruel, inhuman, or degrading treatment or cruel,  
37 inhuman, or degrading punishment evolve during a procedure  
38 where a psychologist is present, the psychologist shall attempt to  
39 intervene to stop such behavior, and failing that exit the procedure”;  
40 and



1 WHEREAS, In June 2005, the House of Delegates of the  
2 American Nurses Association issued a resolution stating all of the  
3 following: “prisoners and detainees have the right to health care  
4 and humane treatment”; “registered nurses shall not voluntarily  
5 participate in any deliberate infliction of physical or mental  
6 suffering”; “registered nurses who have knowledge of ill-treatment  
7 of any individuals including detainees and prisoners must take  
8 appropriate action to safeguard the rights of that individual”; “the  
9 American Nurses Association shall condemn interrogation  
10 procedures that are harmful to mental and physical health”; “the  
11 American Nurses Association shall advocate for nondiscriminatory  
12 access to health care for wounded military and paramilitary  
13 personnel and prisoners of war”; and “the American Nurses  
14 Association shall counsel and support nurses who speak out about  
15 acts of torture and abuse”; and

16 *WHEREAS, The California Nurses Association clearly states*  
17 *that “the social contract between registered nurses and society is*  
18 *based upon a code of ethics that is grounded in the basic ethical*  
19 *principles of respect for human rights and dignity, the*  
20 *non-infliction of harm, and because these principles command*  
21 *that registered nurses protect or preserve life, avoid doing harm,*  
22 *advocate in the exclusive interest of their patients, and create a*  
23 *fiduciary relationship of trust and loyalty with recipients of their*  
24 *care”;* and

25 WHEREAS, In March 2005, the California Medical Association  
26 stated that it “condemns any participation in, cooperation with, or  
27 failure to report by physicians and other health professionals the  
28 mental or physical abuse, sexual degradation, or torture of prisoners  
29 or detainees”; and

30 WHEREAS, In November 2004, the American Public Health  
31 Association stated that it “condemns any participation in,  
32 cooperation with, or failure to report by health professionals the  
33 mental or physical abuse, sexual degradation, or torture of prisoners  
34 or detainees,” that it “urges health professionals to report abuse or  
35 torture of prisoners and detainees,” and that it “supports the rights  
36 of health workers to be protected from retribution for refusing to  
37 participate or cooperate in abuse or torture in military settings”;  
38 and

39 WHEREAS, The United States military medical system in  
40 Guantanamo Bay, Afghanistan, Iraq, and other foreign military

1 prisons operated by the United States failed to protect detainees’  
2 rights to medical treatment, failed to prevent disclosure of  
3 confidential medical information to interrogators and others, failed  
4 to promptly report injuries or deaths caused by beatings, failed to  
5 report acts of psychological and sexual degradation, and sometimes  
6 collaborated with abusive interrogators and guards; and

7 WHEREAS, Current United States Department of Defense  
8 guidelines authorize the participation of certain military health  
9 personnel, especially psychologists, in the interrogation of  
10 detainees as members of “Behavioral Science Consulting Teams”  
11 in violation of professional ethics. These guidelines also permit  
12 the use of confidential clinical information from medical records  
13 to aid in interrogations; and

14 WHEREAS, Evidence in the public record indicates that military  
15 psychologists participated in the design and implementation of  
16 psychologically abusive interrogation methods used at Guantanamo  
17 Bay, in Iraq, and elsewhere, including sleep deprivation, long-term  
18 isolation, sexual and cultural humiliation, forced nudity, induced  
19 hypothermia and other temperature extremes, stress positions,  
20 sensory bombardment, manipulation of phobias, force-feeding  
21 hunger strikers, and more; and

22 WHEREAS, Published reports indicate that the so-called  
23 “enhanced interrogation methods” of the Central Intelligence  
24 Agency reportedly include similar abusive methods and that agency  
25 psychologists may have assisted in their development; and

26 WHEREAS, Medical and psychological studies and clinical  
27 experience show that these abuses can cause severe or serious  
28 mental pain and suffering in their victims, and therefore may  
29 violate the “torture” and “cruel and inhuman treatment” provisions  
30 of CAT and the United States War Crimes Act, as amended by the  
31 Military Commissions Act of 2006; and

32 WHEREAS, The United States Department of Defense has  
33 failed to oversee the ethical conduct of California-licensed health  
34 professionals related to torture; and

35 WHEREAS, Waterboarding is a crime under the United States  
36 War Crimes Act and Chapter 113C (commencing with Section  
37 2340) of Title 18 of the United States Code, is a crime against  
38 humanity under international human rights law, is a war crime  
39 under humanitarian laws, and is prohibited by the United States  
40 Army Field Manual. United States district courts, state courts,

1 including, but not limited to, the Mississippi Supreme Court, and  
2 United States military tribunals have convicted defendants of  
3 criminal acts in waterboarding cases; and

4 WHEREAS, Nobel Peace Prize Laureate Dr. Martin Luther  
5 King, Jr., said, “Commit yourself to the noble struggle for human  
6 rights. You will make a greater person of yourself, a greater nation  
7 of your country and a finer world to live in”; now, therefore, be it

8 *Resolved by the Senate and the Assembly of the State of*  
9 *California, jointly,* That California-licensed health professionals  
10 are absolutely prohibited from knowingly planning, designing,  
11 participating in, or assisting in the use of condemned techniques  
12 at any time and may not enlist others to employ these techniques  
13 to circumvent that prohibition; and be it further

14 *Resolved,* That the Legislature hereby requests all relevant  
15 California agencies, including, but not limited to, the Board of  
16 Behavioral Sciences, the Dental Board of California, the Medical  
17 Board of California, the Osteopathic Medical Board of California,  
18 the Bureau of Naturopathic Medicine, the California State Board  
19 of Pharmacy, the Physician Assistant Committee of the Medical  
20 Board of California, the California Board of Podiatric Medicine,  
21 the Board of Vocational Nursing and Psychiatric Technicians, the  
22 Board of Psychology, and the Board of Registered Nursing, to  
23 notify California-licensed health professionals via newsletter,  
24 email, Web site, or existing notification processes about their  
25 professional obligations under international law, specifically  
26 Common Article III of the Geneva Conventions, the Convention  
27 against Torture and Other Cruel, Inhuman, or Degrading Treatment  
28 or Punishment (CAT), and the amended War Crimes Act, which  
29 prohibit the torture of, and the cruel, inhuman, and degrading  
30 treatment or punishment of, detainees in United States custody;  
31 and be it further

32 *Resolved,* That the Legislature hereby requests all relevant  
33 California agencies to notify health professionals licensed in  
34 California that those who participate in coercive or “enhanced”  
35 interrogation, torture, as defined by CAT, or other forms of cruel,  
36 inhuman, or degrading treatment or punishment may one day be  
37 subject to prosecution; and be it further

38 *RESOLVED, That the Legislature hereby requests that when*  
39 *California licensed health professionals have reason to believe*  
40 *that interrogations are coercive or “enhanced” or involve torture*

1 *or cruel, inhuman, or degrading treatment or punishment, they*  
2 *shall report their observations to the appropriate authorities, and*  
3 *if the authorities are aware of those abusive interrogation*  
4 *practices, but have not intervened, then those health professionals*  
5 *are ethically obligated to report those practices to independent*  
6 *authorities that have the power to investigate and adjudicate those*  
7 *allegations; and be it further*

8 *Resolved*, That in view of the ethical obligations of health  
9 professionals, the record of abusive interrogation practices, and  
10 the Legislature's interest in protecting California-licensed health  
11 professionals, the Legislature hereby requests the United States  
12 Department of Defense and the Central Intelligence Agency to  
13 remove all California-licensed health professionals from  
14 participating in any way in prisoner and detainee interrogations  
15 that are coercive or "enhanced" or that involve torture or cruel,  
16 inhuman, or degrading treatment or punishment, as defined by the  
17 Geneva Conventions, CAT, relevant jurisprudence regarding CAT,  
18 and related human rights documents and treaties; and be it further

19 *Resolved*, That no law, regulation, order, or exceptional  
20 circumstance, whether induced by state of war or threat of war,  
21 internal political instability, or any other public emergency, may  
22 be invoked as justification for torture or cruel, inhuman, or  
23 degrading treatment or punishment; and be it further

24 *Resolved*, However, that California-licensed health professionals  
25 continue to provide appropriate health care if called upon to deal  
26 with a victim of the conduct and torture described in this resolution;  
27 and be it further

28 *Resolved*, That the Secretary of the Senate transmit copies of  
29 this resolution to the United States Department of Defense, the  
30 Central Intelligence Agency, and all relevant California agencies,  
31 including, but not limited to, the Board of Behavioral Sciences,  
32 the Dental Board of California, the Medical Board of California,  
33 the Osteopathic Medical Board of California, the Bureau of  
34 Naturopathic Medicine, the California State Board of Pharmacy,  
35 the Physician Assistant Committee of the Medical Board of  
36 California, the California Board of Podiatric Medicine, the Board  
37 of Vocational Nursing and Psychiatric Technicians, the Board of  
38 Psychology, and the Board of Registered Nursing.

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<u>BILL</u>	<u>AUTHOR</u>	<u>TITLE</u>	<u>STATUS</u>	<u>AMENDED</u>
AB 10	De La Torre	Health Care Providers	Sen. Approps.	06/23/08
AB 54	Dymally	Health Care Coverage: acupuncture	Enrolled	03/03/08
AB 55	Laird	Referral Fee: technology and services	Asm. Health (8/5)	07/03/08
AB 64	Berg	Uniform Emergency Volunteer Health Practitioners Act	Sen. Rules	07/11/07
AB 158	Ma	Medi-Cal: nondisabled persons infected with chronic hep. B	Sen. Approps. (8/5)	05/07/08
AB 638	Bass	Physician Assistants: educational loan program	Sen. Approps. - susp	07/02/08
AB 865	Davis	State Agencies: live customer service agents	Asm. Concur.	06/24/08
AB 1137	Eng	Chiropractors	Asm. B&P	06/04/07
AB 1154	Leno	Diabetes Task Force and Pilot Program	Sen. Approps. - susp	06/18/08
AB 1203	Salas	Health Care Service Plans: noncontracting hospitals	Sen. Approps. (8/4)	06/30/08
AB 1390	Huffman	Health Care Service Plans: unfair payment patterns	Sen. Approps. (8/4)	06/12/08
AB 1486	Calderon	Licensed Professional Counselors	Sen. Approps. (8/4)	06/23/08
AB 1861	Emmerson	State Board of Chiropractice Examiners	DEAD	03/28/08
AB 1869	Anderson	Transition DCA Boards to Bureaus	DEAD	04/03/08
AB 1922	Hernandez	Healing Arts Practitioners: peer review	Chaptered	05/14/08
AB 1925	Eng	Franchise Tax Board: business and prof. licenses	Sen. Rev. & Tax	07/03/08
AB 1940	DeVore	Temporary Disabled Persons' Placards: pregnancy	DEAD	Introduced
AB 2111	Smyth	Physical Therapists	Sen. Approps.	06/23/08
AB 2117	Evans	Dependent Children: psychotropic medications	Asm. Approps.-susp	07/10/08
AB 2120	Galgiani	Medical Telemedicine	Enrolled	05/15/08
AB 2122	Plescica	Surgical Clinics: licensure	DEAD	03/24/08
AB 2207	Lieu	Emergency Rooms: overcrowding	DEAD	04/22/08
AB 2210	Price	Dentistry: emergency services	Sen. Approps. (8/4)	07/02/08

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AB 2234	Portantino	Health Care Coverage: breast conditions	DEAD	04/22/08
AB 2351	Garrick	Workers' Comp.: medical treatment utilization reviews	DEAD	Introduced
AB 2423	Bass	Professions and Vocations: Licensure	Sen. Approps. (8/4)	07/01/08
AB 2539	Strickland	State Boards and Commissions: salaries: suspension	DEAD	03/10/08
AB 2542	Nakanishi	Patient Safety	DEAD	Introduced
AB 2661	Dymally	Telemedicine: without appropriate exam	DEAD	03/24/08
AB 2690	Krekorian	Prod. Liability Actions: pres. pharmaceutical products	DEAD	05/07/08
AB 2697	Huffman	Hospitals: emergency medical services	Sen. Approps. (8/4)	07/02/08
AB 2702	Nunez	Maddy Emerg. Med. Serv. Fund: phys. reimburs.: LA county	Sen. Floor	06/30/08
AB 2721	Fuller	Telemedicine Task Force	DEAD	Introduced
AB 2787	Arambula	Clinics: licensing: hours of operation	DEAD	Introduced
AB 2794	Blakeslee	Diagnostic Imaging Services	Sen. Approps. (8/4)	06/19/08
AB 2807	Adams	Department of Consumer Affairs	DEAD	Introduced
AB 2811	Bass	Physician Assistant Practice Act	DEAD	Introduced
AB 2847	Krekorian	Health Care Coverage	DEAD	04/23/08
AB 3000	Wolk	Health Care Decisions: life sustaining treatment	Enrolled	07/02/08
AB 3037	Eng	Boards and Commissions	DEAD	04/21/08
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ABX1 2	Nunez	Health Care Reform	Asm. Health	11/08/07
ABX1 6	Nakanishi	Physician Assistants: educational loan program	Introduced	Introduced
ACR 87	Hayashi	Legislative Task Force on Peripheral Neuropathy	Sen. Rules	06/19/08
ACR 112	Soto	Legislative Task Force on Fibromyalgia	Sen. Rules	06/25/08

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SB 356	Negrete McLeod	List of Reportable Diseases and Conditions	Inactive File	08/20/07
SB 676	Ridley-Thomas	Health: immunizations	Asm. Approps.-susp	08/20/07
SB 721	Ashburn	State Agencies: succession plans	Asm. Approps.-susp	Introduced
SB 731	Oropeza	Massage Therapy	Asm. Approps.-susp	07/09/07
SB 825	Padilla	Public Health: shaken baby syndrome	Asm. Approps. - susp	06/11/08
SB 840	Kuehl	Single-Payer Health Care Coverage	Asm. Approps. - susp	07/10/07
SB 1098	Migden	Medical Marijuana	DEAD	03/11/08
SB 1184	Kuehl	Public Health	Asm. Floor	07/03/08
SB 1260	Runner	Health Clinics	Sen. Concur.	06/18/08
SB 1288	Scott	Cal. State Univ.: Doctor of Nursing Practice Degree	DEAD	04/23/08
SB 1307	Ridley-Thomas	Pharmacy: pedigree	Asm. Approps.	06/17/08
SB 1338	Migden	Workers' Comp.: med. treatment: predesignation of phy.	Asm. Floor	04/30/08
SB 1402	Corbett	Reporting Requirements	Asm. Floor	06/11/08
SB 1494	McClintock	State Agency Web Sites: information	DEAD	04/10/08
SB 1505	Yee	Board of Behavioral Sciences: fees	Asm. Approps.	07/14/08
SB 1525	Kuehl	Health Care Coverage: medical necessity determinations	Asm. Approps. - susp	04/24/08
SB 1535	Kuehl	MBC: medical directors	DEAD	Introduced
SB 1633	Kuehl	Dental Services: credit	Asm. Floor	06/18/08
SB 1639	Ashburn	Nurse Practitioners	DEAD	Introduced
SB 1729	Migden	Nursing Home: training	Asm. Approps. - susp	05/23/08
SB 1769	Perata	Department of Consumer Affairs	DEAD	Introduced
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SBX1 6	Runner	Hospitals: preventative medical services	Sen. Rules	Introduced
SBX1 9	Runner	Primary Care Clinics	Sec. of Senate	01/10/08
SBX1 12	Runner	Health Care Cost and Quality Transparency	Sen. Health	01/14/08
SJR 20	Migden	Medical Marijuana	Asm. Pub. Safety	06/16/08